

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1964

No. 245

**WATERMAN STEAMSHIP CORPORATION,
PETITIONER,**

UNITED STATES,

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

**PETITION FOR CERTIORARI FILED JULY 2, 1964
CERTIORARI GRANTED DECEMBER 7, 1964**

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1964

No. 245

WATERMAN STEAMSHIP CORPORATION,
PETITIONER,

v.

UNITED STATES.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

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[fol. 3]

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

Civil Action No. 2284

WATERMAN STEAMSHIP CORPORATION, Plaintiff,
vs.

UNITED STATES OF AMERICA, Defendant.

COMPLAINT—Filed October 14, 1959

Claim One

1. This action arises under the provisions of Sections 1346 (a) (1) and 1402, of Title 28 of the United States Code.

2. The full name of Plaintiff is Waterman Steamship Corporation. Plaintiff is a corporation organized and existing under the laws of the State of Alabama, with its principal office and place of business in the City of Mobile, County of Mobile, State of Alabama, within the jurisdiction of this Honorable Court.

3. This claim is to recover from the United States of America an overpayment of Federal income taxes of Four Hundred Eighty Two Thousand Five Hundred Forty Eight and 28/100 (\$482,548.28) Dollars, together with interest thereon as provided by law, representing Federal income taxes and interest erroneously and illegally assessed against and collected from the Plaintiff (\$376,387.63 normal tax and surtax and \$106,160.65 deficiency interest) for Plaintiff's taxable year 1947 ended on December 31, 1947.

4. On or about September 10, 1948, pursuant to an extension of time granted to Plaintiff for filing the same, Plaintiff [fol. 4] filed its Federal Income Tax Return for the taxable year 1947 with the Collector of Internal Revenue,

Birmingham, Alabama, (now District Director of Internal Revenue). Plaintiff paid to the Collector of Internal Revenue, Birmingham, Alabama, the full amount of tax shown to be due on said return, viz: \$3,343,367.72, in the amounts and on the dates as follows:

<i>Date of Payment</i>	<i>Tax Paid</i>
March 13, 1948	\$1,020,000.00
June 15, 1948	800,000.00
September 10, 1948	687,525.79
December 14, 1948	835,841.93
Total	\$3,343,367.72

5. Pursuant to the assessment of deficiencies, Plaintiff paid partially to the Collector of Internal Revenue, Birmingham, Alabama, and partially to the District Director of Internal Revenue, Birmingham, Alabama, additional income tax for its taxable year 1947 in the amount of \$1,313,846.72, with interest thereon in the amount of \$287,976.34, in the amounts and on the dates as follows:

<i>Date of Payment</i>	<i>Tax Paid</i>	<i>Interest Paid</i>
June 7, 1951	\$ 994,900.00	\$ 56,929.28
June 7, 1951	135,726.62	—
November 5, 1954	115,000.00	—
April 13, 1955	—	196,341.29
February 11, 1957	56,104.83	—
April 17, 1957	12,115.27	34,705.77
Total	\$1,313,846.72	\$287,976.34

[fol. 5] 6. (a) Plaintiff is, and was at all times pertinent to the matters herein alleged and complained of, a steamship company engaged in the transportation of goods and cargo in interstate and foreign commerce and in connection with such activity owns and operates a fleet of vessels. At various times during World War II and prior to March 8, 1946, Plaintiff purchased eighteen (18) C-2 type cargo vessels from the United States Maritime Commission for use in its said business.

(b) Plaintiff owned said eighteen (18) vessels during its taxable year 1947 and Plaintiff's costs of said vessels on which it was entitled to compute depreciation allowable for said taxable year under the Internal Revenue Laws of the United States were \$26,816,820.39, as follows:

Original Purchase Price Paid by Plaintiff	\$49,582,767.02
Less Net Sales Price Adjustments Effective as of March 8, 1946, Allowed Plaintiff Under the Merchant Ship Sales Act of 1946, 60 Stat. 41 (50 App. U.S.C. Sec. 1735 et seq.)	\$22,765,946.63
Total Purchase Price and Basis for Depreciation	\$26,816,820.39

(c) In computing its Federal income taxes for the taxable year 1947, as shown on Plaintiff's Income Tax Return for that year, Plaintiff erroneously computed the depreciation allowable for said taxable year with respect to said eighteen (18) vessels on a basis of only \$17,997,981.84. Plaintiff therefore erroneously failed to deduct depreciation in the amount of \$521,738.30, said sum being the depreciation of said vessels allowable for Plaintiff's taxable [fol. 6] year 1947 on the difference of \$8,818,838.55 between said erroneous basis of \$17,997,981.84 and said correct basis of \$26,816,820.39 as computed in sub-paragraph 6 (b) hereof.

11. On September 26, 1957, and within the time required by law, Plaintiff filed with the District Director of Internal Revenue, Birmingham, Alabama, on United States Treasury Department Form 843 a claim for refund of an overpayment of its Federal income taxes for the taxable year 1947 in the amount of \$376,387.63 or such greater amount as may be legally refundable. In said claim for refund Plaintiff claimed refund of corporation income taxes for its taxable year 1947 with respect to a deduction for additional depreciation of C-2 type cargo vessels (Paragraph 6 hereof), a deduction for additional Alabama State income tax liability (Paragraph 7 hereof), the treatment of gain upon the sale

of vessels as long-term capital gain (Paragraph 8, hereof), [fol. 7] the allowance of a depreciation deduction for vessels purchased from the United States Navy (Paragraph 9 hereof), and the allowance of an additional foreign tax credit representing tax imposed by the Republic of the Philippines (Paragraph 10 hereof). A copy of said claim for refund is attached hereto as Exhibit "A", incorporated herein and made a part hereof by reference.

12. Said claim for refund of Federal income taxes for Plaintiff's taxable year 1947 was erroneously denied by the Commissioner of Internal Revenue in a notice mailed to Plaintiff by registered mail on December 16, 1957, by the District Director of Internal Revenue, Birmingham, Alabama.

13. Plaintiff avers that by virtue of the matters herein alleged there has been an overpayment by Plaintiff of its Federal income taxes for the taxable year 1947 in an amount of no less than \$376,387.63, and an overpayment of interest thereon in an amount of no less than \$106,160.65, which amounts have been erroneously and wrongfully assessed against and collected from Plaintiff under the Internal Revenue Laws of the United States.

14. The premises considered, Plaintiff claims of the Defendant the sum of \$482,548.28, together with interest thereon as provided by law, the costs and disbursements of this action, and for such additional sum or further relief as the exigencies of the case may require and as the Court may deem equitable and proper.

Claim Two

15. Plaintiff incorporates herein by reference the allegations of Paragraphs 1 and 2 above.

[fol. 8] 16. This claim is to recover from the United States of America an overpayment of Federal income taxes of Nine Hundred Sixty Three Hundred Thousand Nine Hundred Sixty Five and 87/100 (\$963,965.87) Dollars, together with interest thereon as provided by law, representing Federal income taxes and interest erroneously and

illegally assessed against and collected from the Plaintiff (\$696,522.22 normal tax and surtax and \$267,443.65 deficiency interest) for Plaintiff's taxable year 1948 ended on December 31, 1948.

17. - On or about September 14, 1949, pursuant to an extension of time granted to Plaintiff for filing the same, Plaintiff filed its Federal Income Tax Return for the taxable year 1948 with the Collector of Internal Revenue, Birmingham, Alabama, (now District Director of Internal Revenue). Plaintiff paid to the Collector of Internal Revenue, Birmingham, Alabama, the full amount of tax shown to be due on said return, viz: \$3,189,492.33, in the amounts and on the dates as follows:

<i>Date of Payment</i>	<i>Tax Paid</i>
March 12, 1949	\$ 800,000.00
June 14, 1949	800,000.00
September 14, 1949	390,999.25
September 14, 1949	401,120.00
December 14, 1949	797,373.08
Total	\$3,189,492.33

18. Pursuant to the assessment of deficiencies, Plaintiff paid partially to the Collector of Internal Revenue, Birmingham, Alabama, and partially to the District Director [fol. 9] of Internal Revenue, Birmingham, Alabama, additional income tax for its taxable year 1948 in the amount of \$1,141,526.67, with interest thereon in the amount of \$344,195.24, in the amounts and on the dates as follows:

<i>Date of Payment</i>	<i>Tax Paid</i>	<i>Interest Paid</i>
June 7, 1951	\$ 359,400.00	\$ 46,225.51
June 7, 1951	1,806.06	—
November 5, 1954	478,000.00	—
April 13, 1955	—	154,418.24
February 11, 1957	293,318.04	—
April 17, 1957	9,002.58	143,551.49
Total	\$1,141,526.67	\$344,195.24

19. (a) Plaintiff incorporates herein by reference the allegations of sub-paragraph 6 (a) above.

(b) Plaintiff owned said eighteen (18) vessels during all of its taxable year 1948, except for one of the vessels which it sold on September 28, 1948. Plaintiff's costs of said eighteen (18) vessels owned by it through September 28, 1948, on which it was entitled to compute depreciation allowable for that part of its taxable year 1948 from January 1, 1948, through September 28, 1948, under the Internal Revenue Laws of the United States were \$26,816,820.39, as follows:

Original Purchase Price Paid by Plaintiff	\$49,582,767.02
Less Net Sales Price Adjustments Effective as of March 8, 1946; Allowed Plaintiff [fol. 10] Under the Merchant Ship Sales Act of 1946, 60 Stat. 41 (50 App. U.S.C. Sec. 1735 et seq.)	\$22,765,946.63
Total Purchase Price and Basis for Depreciation	\$26,816,820.39

(c) Plaintiff's costs of said seventeen (17) vessels owned by Plaintiff from September 29, 1948, through December 31, 1948, on which it was entitled to compute depreciation allowable for that part of its taxable year 1948 from September 29, 1948, through December 31, 1948, under the Internal Revenue Laws of the United States were \$25,982,993.16, as follows:

Original Purchase Price Paid by Plaintiff	\$46,591,639.20
Less Net Sales Price Adjustments Effective as of March 8, 1946; Allowed Plaintiff Under the Merchant Ship Sales Act of 1946, 60 Stat. 41 (50 App. U.S.C. Sec. 1735 et seq.)	\$20,608,646.04
Total Purchase Price and Basis for Depreciation	\$25,982,993.16

(d) In computing its Federal income taxes for the taxable year 1948, as shown on Plaintiff's Income Tax Return for that year, Plaintiff erroneously computed the depreciation allowable for that part of said taxable year from January 1, 1948, through September 28, 1948, with respect to said eighteen (18) vessels on a basis of only \$17,997,981.84, and Plaintiff erroneously computed the depreciation allowable for that part of said taxable year from September 29, 1948, through December 31, 1948, with [fol. 11] respect to said seventeen (17) vessels on a basis of only \$17,030,213.84. Plaintiff therefore erroneously failed to deduct depreciation in the amount of \$523,722.64, said sum being the depreciation of said eighteen (18) vessels allowable for that part of said taxable year from January 1, 1948, through September 28, 1948, on the difference of \$8,818,838.55 between said erroneous basis of \$17,997,981.84 and the correct basis of \$26,816,820.39 as computed in sub-paragraph 19 (b) hereof, and the depreciation of said seventeen (17) vessels allowable for that part of said taxable year from September 29, 1948, through December 31, 1948, on the difference of \$8,952,779.32 between said erroneous basis of \$17,030,213.84 and the correct basis of \$25,982,993.16 as computed in sub-paragraph 19 (c) hereof.

24. On September 26, 1957, and within the time required by law, Plaintiff filed with the District Director of Internal [fol. 12] Revenue, Birmingham, Alabama, on United States Treasury Department Form 843 a claim for refund of an over-payment of its Federal income taxes for the taxable year 1948 in the amount of \$696,522.22 or such greater amount as may be legally refundable. In said claim for refund Plaintiff claimed refund of corporation income taxes for its taxable year 1948 with respect to a deduction for additional depreciation of C-2 type cargo vessels (Paragraph 19 hereof), a deduction for additional Alabama State income tax liability (Paragraph 20 hereof), the treatment of gain upon the sale of vessels as long-term capital gain (Paragraph 21 hereof), the allowance of a depreciation deduction for vessels purchased from the United States Navy (Paragraph 22 hereof), and the allowance of an addi-

tional foreign tax credit representing tax imposed by the Republic of the Philippines (Paragraph 23 hereof). A copy of said claim for refund is attached hereto as Exhibit "B", incorporated herein and made a part hereof by reference.

25. Said claim for refund of Federal income taxes for Plaintiff's taxable year 1948 was erroneously denied by the Commissioner of Internal Revenue in a notice mailed to Plaintiff by registered mail on December 16, 1957, by the District Director of Internal Revenue, Birmingham, Alabama.

26. Plaintiff avers that by virtue of the matters herein alleged there has been an overpayment by Plaintiff of its Federal income taxes for the taxable year 1948 in an amount of no less than \$696,522.22 and an overpayment of interest thereon in an amount of no less than \$267,443.65, which amounts have been erroneously and wrongfully assessed against and collected from Plaintiff under the Internal Revenue Laws of the United States.

[fol. 13] 27. The premises considered, Plaintiff claims of the Defendant the sum of \$963,965.87, together with interest thereon as provided by law, the costs and disbursements of this action, and such additional sums or further relief as the exigencies of the case may require, and as the Court may deem equitable and proper.

Claim Three

28. Plaintiff incorporates herein by reference the allegations of Paragraphs 1 and 2 above.

29. This claim is to recover from the United States of America an overpayment of Federal income taxes of One Million One Hundred Sixteen Hundred Thousand Three Hundred Twenty Three and 28/100 (\$1,116,323.28) Dollars, together with interest thereon as provided by law, representing Federal income taxes and interest erroneously and illegally assessed against and collected from the Plaintiff (\$868,844.06 normal tax and surtax and \$247,479.22 deficiency interest) for Plaintiff's taxable year 1949 ended on December 31, 1949.

30. On or about September 11, 1950, pursuant to an extension of time granted to Plaintiff for filing the same, Plaintiff filed its Federal Income Tax Return for the taxable year 1949 with the Collector of Internal Revenue, Birmingham, Alabama (now District Director of Internal Revenue). Plaintiff paid to the Collector of Internal Revenue, Birmingham, Alabama, the full amount of tax shown to be due [fol. 14] on said return, viz: \$1,473,667.11, in the amounts and on the dates as follows:

<i>Date of Payment</i>	<i>Tax Paid</i>
March 14, 1950	\$ 375,000.00
June 15, 1950	375 000.00
September 12, 1950	355,250.33
December 14, 1950	13,786.78
December 14, 1950	354 630.00
Total	\$1,473,667.11

31. Pursuant to the assessment of deficiencies, Plaintiff paid partially to the Collector of Internal Revenue, Birmingham, Alabama, and partially to the District Director of Internal Revenue, Birmingham, Alabama, additional income tax for its taxable year 1949 in the amount of \$924,070.37, with interest thereon in the amount of \$251,562.94, in the amounts and on the dates as follows:

<i>Date of payment</i>	<i>Tax Paid</i>	<i>Interest Paid</i>
June 7, 1951	\$283,300.00	\$ 8,816.02
June 7, 1951	12,047.30	—
November 5, 1954	215,000.00	—
April 15, 1955	—	71,037.73
February 11, 1957	407,203.87	—
April 17, 1957	6,519.20	171,709.19
Total	\$924,070.37	\$251,562.94

32. (a) Plaintiff incorporates herein by reference the allegations of sub-paragraph 6 (a) above.

[fol. 15] (b) Plaintiff owned seventeen (17) of said C-2 vessels during its taxable year 1949 and Plaintiff's costs of

said vessels on which it was entitled to compute depreciation allowable for said taxable year under the Internal Revenue Laws of the United States were \$25,982,993.16, as follows:

Original Purchase Price Paid by Plaintiff....	\$46,591,639.20
Less Net Sales Price Adjustments Effective as of March 8, 1946, Allowed Plaintiff Under the Merchant Ship Sales Act of 1946; 60 Stat. 41 (50 App. U.S.C. Sec. 1735 et seq.)	\$20,608,646.04
Total Purchase Price and Basis for De- preciation	\$25,982,993.16

(c) In computing its Federal income taxes for the taxable year 1949, as shown on Plaintiff's Income Tax Return for that year, Plaintiff erroneously computed the depreciation allowable for said taxable year with respect to said seventeen vessels on a basis of only \$17,030,213.84. Plaintiff therefore erroneously failed to deduct depreciation in the amount of \$529,443.45; said sum being the depreciation of said vessels allowable for Plaintiff's taxable year 1949 on the difference of \$8,952,779.32 between said erroneous basis of \$17,030,213.84 and the correct basis of \$25,982,993.16 as computed in sub-paragraph 32 (b) hereof.

[fol. 16] 37. On September 26, 1957, and within the time required by law, Plaintiff filed with the District Director of Internal Revenue, Birmingham, Alabama, on United States Treasury Department Form 843 a claim for refund for an overpayment of its Federal income taxes for the taxable year 1949 in the amount of \$868,844.06 or such greater amount as may be legally refundable. In said claim for refund, Plaintiff claimed refund of corporation income taxes for its taxable year 1949 with respect to a deduction for additional depreciation of C-2 type cargo vessels (Paragraph 32 hereof), a deduction for additional Alabama State income tax liability (Paragraph 33 hereof), the allowance of an additional foreign tax credit representing a tax imposed by the Republic of the Philippines (Paragraph 34

hereof), the allowance of a deduction for a bad debt (Paragraph 35 hereof), and the allowance of a capital loss for worthlessness of stock (Paragraph 36 hereof). A copy of said claim for refund is attached hereto as Exhibit "C", incorporated herein and made a part hereof by reference.

38. Said claim for refund of Federal income taxes for Plaintiff's taxable year 1949 was erroneously denied by the [fol. 17] Commissioner of Internal Revenue in a notice mailed to Plaintiff by registered mail on December 16, 1957, by the District Director of Internal Revenue, Birmingham, Alabama.

39. Plaintiff avers that by virtue of the matters herein alleged there has been an overpayment by Plaintiff of its Federal income taxes for the taxable year 1949 in an amount of no less than \$868,844.06 and an overpayment of interest thereon in an amount of no less than \$247,479.22, which amounts have been erroneously and wrongfully assessed against and collected from Plaintiff under the Internal Revenue Laws of the United States.

40. The premises considered, Plaintiff claims of the Defendant the sum of \$1,116,323.28, together with interest thereon as provided by law, the costs and disbursements of this action, and such additional sum or further relief as the exigencies of the case may require, and as the Court may deem equitable and proper.

Claim Four

41. Plaintiff incorporates herein by reference the allegations of Paragraphs 1 and 2 above.

42. This claim is to recover from the United States of America an overpayment of Federal income taxes of Two Hundred Forty Eight Hundred Thousand Nine Hundred Thirty Five Hundred and 86/100 (\$248,935.86) Dollars, together with interest thereon as provided by law, representing Federal income taxes and interest erroneously and illegally assessed against and collected from the Plaintiff (\$236,801.68 normal tax and surtax and \$12,134.18 deficiency [fol. 18] interest) for Plaintiff's taxable year 1950 ended on December 31, 1950.

43. On or about September 13, 1951, pursuant to an extension of time granted to Plaintiff for filing the same, Plaintiff filed its Federal Income Tax Return for the taxable year 1950 with the Collector of Internal Revenue, Birmingham, Alabama (now District Director of Internal Revenue). Plaintiff paid to the Collector of Internal Revenue, Birmingham, Alabama, the full amount of tax shown to be due on said return, viz: \$631,707.19, in the amounts and on the dates as follows:

<i>Date of Payment</i>	<i>Tax Paid</i>
March 13, 1951	\$ 6,510.00
March 13, 1951	203,490.00
June 14, 1951	210,000.00
September 13, 1951	85,365.75
December 13, 1951	126,341.44
Total	<u>\$631,707.19</u>

44. Pursuant to the assessment of deficiencies, Plaintiff paid to the District Director of Internal Revenue, Birmingham, Alabama, additional income tax for its taxable year 1950 in the amount of \$173,829.97, with interest thereon in the amount of \$12,482.42, in the amounts and on the dates as follows:

<i>Date of Payment</i>	<i>Tax Paid</i>	<i>Interest Paid</i>
May 26, 1952	\$164,312.39	\$12,482.42
May 26, 1952	9,517.58	—
Total	<u>\$173,829.97</u>	<u>\$12,482.42</u>

[fol. 19] 45. Subsequent to the filing of Plaintiff's Federal Income Tax Return for the taxable year 1950, the Re-negotiation Board determined certain excessive profits of Plaintiff which were refundable to said Board. As a result of said determination, the Commissioner of Internal Revenue, upon examination of said Tax Return, allowed Plaintiff a credit of \$27,762.00 against its Federal income taxes for the taxable year 1950.

46. The Commissioner of Internal Revenue, upon examination of Plaintiff's Income Tax Return for the taxable

year 1950, determined for said taxable year a net over-assessment against Plaintiff of income taxes in the amount of \$4,849.50 and a net overassessment against Plaintiff of interest in the amount of \$348.24, and allowed said net overassessments, together with interest thereon of \$1,509.91, as a credit against Plaintiff's Federal income taxes for the taxable year 1947.

47. (a) Plaintiff incorporates herein by reference the allegations of sub-paragraph 6 (a) above.

(b) Plaintiff owned seventeen (17) of said C-2 vessels during its taxable year 1950 and Plaintiff's costs of said vessels on which it was entitled to compute depreciation allowable for said taxable year under the Internal Revenue Laws of the United States were \$25,982,993.16, as follows:

Original Purchase Price Paid by Plaintiff....	\$46,591,639.20
Less Net Sales Price Adjustments Effective as of March 8, 1946, Allowed Plaintiff Under the Merchant Ship Sales Act of 1946, 60 Stat. 41 (50 App. U.S.C. Sec. 1735 et seq.)	\$20,608,646.04
Total Purchase Price and Basis for De- preciation	\$25,982,993.16

[fol. 20] (c) In computing its Federal income taxes for the taxable year 1950, as shown on Plaintiff's Income Tax Return for that year, Plaintiff erroneously computed the depreciation allowable for said taxable year with respect to said seventeen vessels on a basis of only \$17,030,213.84. Plaintiff therefore erroneously failed to deduct depreciation in the amount of \$529,443.45, said sum being the depreciation of said vessels allowable for Plaintiff's taxable year 1950 on the difference of \$8,952,779.32 between said erroneous basis of \$17,030,213.84 and the correct basis of \$25,982,993.16 as computed in sub-paragraph 47 (b) hereof.

50. On September 26, 1957, and within the time required by law, Plaintiff filed with the District Director of Internal Revenue, Birmingham, Alabama, on United States Treasury

Department Form 843 a claim for refund of an over-payment of its Federal income taxes for the taxable year 1950 [fol. 21] in the amount of \$236,801.68 or such greater amount as may be legally refundable. In said claim for refund, Plaintiff claimed refund of corporation income taxes for its taxable year 1950 with respect to a deduction for additional depreciation of C-2 type cargo vessels (Paragraph 47 hereof), a deduction for additional Alabama State income tax liability (Paragraph 48 hereof), and the allowance of an additional foreign tax credit representing a tax imposed by the Republic of the Philippines (Paragraph 49 hereof). A copy of said claim for refund is attached hereto as Exhibit "D", incorporated herein and made a part hereof by reference.

51. Said claim for refund of Federal income taxes for Plaintiff's taxable year 1950 was erroneously denied by the Commissioner of Internal Revenue in a notice mailed to Plaintiff by registered mail on December 16, 1957, by the District Director of Internal Revenue, Birmingham, Alabama.

52. Plaintiff avers that by virtue of the matters herein alleged that there has been an overpayment by Plaintiff of its Federal income taxes for the taxable year 1950 in an amount of no less than \$236,801.68 and an overpayment of interest thereon in an amount of no less than \$12,134.18, which amounts have been erroneously and wrongfully assessed against and collected from Plaintiff under the Internal Revenue Laws of the United States.

53. The premises considered, Plaintiff claims of the Defendant the sum of \$248,935.86, together with interest thereon as provided by law, the costs and disbursements of this action, and such additional sum or further relief as the exigencies of the case may require, and as the Court may deem equitable and proper.

[fol. 22] WHEREFORE, the premises considered, Plaintiff prays this Court for a judgment against the Defendant upon the facts and law of, to-wit, \$2,811,773.29, with interest thereon as provided by law, the costs and disbursements of this action and such additional sum or further relief as the

exigencies of the case may require and as the Court may deem proper and equitable.

William H. Armbrecht, John W. McConnell, Jr.,
George A. McCain, Jr., Attorneys for Plaintiff.

Of Counsel: Armbrecht, Jackson, McConnell & DeMouy,
1101 Merchants National Bank Building, Mobile, Alabama.

Certificate of Service (omitted in printing).


[fol. 23]

[File endorsement omitted]

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[fol. 24]

EXHIBIT A TO COMPLAINT

(See opposite) 

No. 843 (REV. 5-55)	U. S. TREASURY DEPARTMENT - INTERNAL REVENUE SERVICE <h2 style="margin: 0;">CLAIM</h2> TO BE FILED WITH THE DISTRICT DIRECTOR WHERE ASSESSMENT WAS MADE OR TAX PAID	District Director's Stamp (Date received) <div style="border: 2px solid black; border-radius: 50%; padding: 10px; text-align: center;"> <h3 style="margin: 0;">RECEIVED</h3> <p style="margin: 0;">1957</p> <p style="margin: 0;">OFFICE OF CHIEF, AUDIT DIVISION BIRMINGHAM, ALA.</p> </div>
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The District Director will indicate in the block below the kind of claim filed, and fill in, where required.

☐ Refund of Taxes Illegally, Erroneously, or Excessively Collected.
☐ Refund of Amount Paid for Stamps Unused, or Used in Error or Excess.
☐ Abatement of Tax Assessed (not applicable to estate, gift, or income taxes).

PLEASE TYPE OR PRINT PLAINLY

Name of taxpayer or purchaser of stamps WATKIN STEAMSHIP CORPORATION			
Number and street of E. Joseph Street		City, town, postal zone, State Mobile 13, Alabama	
1. District in which return (if any) was filed Birmingham, Alabama		2. Name and address shown on return, if different from above	
3. Period - If for tax reported on annual basis, prepare separate form for each taxable year From January 1, 1947 To October 31, 1947		4. Kind of tax Income Tax	
5. Amount of assessment \$4,557,214.44		Date of payment as schedule below	
6. Date claims were purchased from the Government		7. Amount to be refunded \$ 376,307.63	
8. Amount to be abated (not applicable to income, estate, or gift taxes)		9. The claimant believes that this claim should be allowed for the following reasons:	

Schedule of payments:
dates of payment -

3/13/40
 5/15/40
 9/10/40
 12/14/40
 5/ 7/51
 5/ 7/51
 11/ 5/54
 2/11/57
 4/17/57

Amount
 \$1,621,000.00
 600,000.00
 807,525.79
 835,541.93
 994,900.00
 135,725.02
 115,000.00
 50,104.00
 12,115.27

\$4,657,214.44

Attach letter size sheets if space is not sufficient.

I declare under the penalties of perjury that this claim (including any accompanying schedules and statements) has been examined by me and to the best of my knowledge and belief is true and correct.

Signed **WATKIN STEAMSHIP CORPORATION**
 Dated **September 23, 1957** by **E. A. Hirs** **Treasurer**

INSTRUCTIONS

1. The claim must set forth in detail each ground upon which it is made and facts sufficient to apprise the Commissioner of the exact basis thereof.
2. If a joint income tax return was filed for the year for which this claim is filed, both husband and wife must sign this claim even though only one had income.
3. Whenever it is necessary to have the claim executed by an agent on behalf of the taxpayer, an authenticated copy of the document specifically authorizing such agent to sign the claim on behalf of the taxpayer shall accompany the claim.
4. If a return is filed by an individual and a refund claim is thereafter filed by a legal representative of the deceased, certified copies of the letters testamentary, letters of administration,

- or other similar evidence must be annexed to the claim, to show the authority of the executor, administrator, or other fiduciary by whom the claim is filed. If an executor, administrator, guardian, trustee, receiver, or other fiduciary files a return and thereafter refund claim is filed by the same fiduciary, documentary evidence to establish the legal authority of the fiduciary need not accompany the claim, provided a statement is made on the claim showing that the return was filed by the fiduciary and that the latter is still acting.
5. Where the taxpayer is a corporation, the claim will be signed with the corporate name, followed by the signature and title of the officer having authority to sign for the corporation.

WATERMAN STEAMSHIP CORPORATION

61 St. Joseph Street

Mobile 13, Alabama

STATEMENT ATTACHED TO AND MADE PART OF
CLAIM FOR REFUND OF U.S. INCOME TAXES
(FORM 843) FOR THE CALENDAR YEAR ENDED
DECEMBER 31, 1947

The within claim for refund of income taxes in the amount of \$376,387.63 or such greater amount as may be legally refundable, is based upon the following grounds:

(a) Taxpayer is entitled to, and claims, a deduction for additional depreciation in the amount of \$521,738.30 in excess of that allowed in the Revenue Agent's Report dated February 9, 1955 transmitted to taxpayer under date of March 24, 1955 and Supplemental Revenue Agent's Report dated December 5, 1955 transmitted to taxpayer December 14, 1955. This is due to the fact that on eighteen (18) C-2 type dry cargo vessels which taxpayer purchased from the U.S. Maritime Commission at high prices during and shortly after the War, taxpayer was granted, as of March 8, 1946, an adjustment in the Original Purchase Price pursuant to Section 9 of the Merchant Ship Sales Act of 1946.

Such Act was passed to provide for the orderly disposition and sale of surplus merchant vessels built by the Government during World War II. After passage of the Act on March 8, 1946, qualified purchasers could obtain such surplus vessels at the so-called "Statutory Sales Price" which was defined therein as a certain percentage of "pre-war domestic cost" with varying adjustments for age, condition, etc. The Statutory Sales Price established thereunder was substantially lower than the price paid for a [fol. 26] similar vessel which had been purchased prior to the effective date of the Act. In order to avoid prejudice to such prior purchasers, Sec. 9 of the Act provided that upon proper application and subject to certain conditions,

they could receive an adjustment in the Original Purchase Price of their vessels.


In its tax return as originally filed, and in the Revenue Agent's Reports referred to above, the so-called Statutory Sales Price was erroneously used as the basis for depreciation of the eighteen vessels referred to above. The correct basis which should have been used in computing depreciation is the Original Purchase Price less the net amount of adjustments obtained by taxpayer pursuant to the formula specified in Section 9(b) of said Act (including Sec. 9(c) (1) to which said subsection refers).

Whereas a new purchaser buying a vessel after March 8, 1946 paid the Statutory Sales Price, this was not the situation in the case of a prior purchaser. In the latter instance such price was only referred to in Sec. 9 as one element in the formula under subsection (b) determining the adjustment of the Original Purchase Price granted to owners who acquired vessels at high prices during the War and prior to the passage of said Act.

There are set forth in *Exhibit A* attached, the names of the 18 vessels, and in the case of each vessel the "Statutory Sales Price", the "Original Purchase Price", and the "Revised Tax Basis" namely, the Cost ("Original Purchase Price") less the net adjustments pursuant to Sec. 9 of the M.S.S. Act. *Exhibit B* attached shows the computation of the amount of the deduction for additional depreciation claimed herein.

[fol. 27] Giving effect to the above changes results in an over-assessment of income tax in the amount referred to above which is hereby claimed as refundable to taxpayer.

EXHIBIT A TO STATEMENT

✓ (See opposite) 

WATERMAN STEAMSHIP CORPORATION

EXHIBIT ATTACHED TO CLAIM FOR REFUND (FORM 863)

Vessel	Statutory Sales Price	Original Purchase Price	Net Adjustments Under Sec. 9	Revised Tax Basis	Increase (Decrease) in Tax Basis
Afoundria	\$ 967,768.00	\$ 2,696,763.77	\$ 1,884,564.34	\$ 814,199.43	\$ (153,568.57)
Andrew Jackson	1,005,380.00	2,691,194.97	1,538,362.43	1,152,832.54	1,474,452.54
Azales City	978,268.00	3,001,657.44	614,922.27	2,386,735.17	1,408,467.17
Blenville	967,768.00	3,000,000.00	538,792.87	2,461,207.13	1,493,438.13
City of Alma	1,012,080.68	2,626,493.54	1,488,208.81	1,138,284.73	126,208.05
Fairisle	983,728.00	3,023,805.28	125,260.13	2,898,545.15	1,914,817.15
Fairland	983,728.00	3,036,211.74	174,907.07	2,861,304.67	1,877,576.67
Fairport	1,075,672.19	2,450,070.78	1,373,153.34	1,076,917.44	1,243.25
Hastings	985,217.99	2,642,706.03	1,494,054.73	1,148,631.30	163,373.31
Jean LaFitte	967,768.00	2,806,924.50	2,020,932.88	787,961.62	(179,806.38)
John B. Waterman	1,077,000.00	2,788,336.61	1,711,336.61	1,077,000.00	
Kyska	1,047,147.19	2,442,739.51	1,321,116.09	1,121,623.42	74,476.23
Madaket	995,328.99	2,641,046.21	1,514,765.54	1,126,280.67	130,951.68
Malden Creek	1,035,439.05	2,419,158.53	1,314,731.93	1,104,426.60	48,967.55
Napheal Seaweed	983,728.00	3,045,258.66	249,906.06	2,795,352.60	1,811,624.60
Nacosta	937,768.00	2,660,169.32	1,783,108.93	877,060.39	(90,707.91)
Warrior	937,768.00	2,991,127.82	2,157,300.59	833,827.23	(133,940.77)
Yata	926,343.25	2,615,102.31	1,450,492.01	1,154,810.30	178,266.55
	<u>\$17,997,961.64</u>	<u>\$69,582,767.02</u>	<u>\$22,765,946.63</u>	<u>\$26,816,820.39</u>	<u>\$8,418,838.55</u>

NOTE: The U.S.M.C. refused to accept applications for, or grant adjustments, on a separate vessel basis, but required owners who purchased vessels prior to March 6, 1946 to apply for and accept or refuse the Sec. 9 adjustments to Original Purchase Price on the basis of all vessels purchased from the Government prior to said date. This accounts for a "Negative" net adjustment in the case of 4 vessels which result in a Revised Tax Basis less than the Statutory Sales Price.

[fol. 29]

EXHIBIT B TO STATEMENT

WATERMAN STEAMSHIP CORPORATION

EXHIBIT ATTACHED TO CLAIM FOR REFUND - (FORM 443)

Vessel	Increase (Decrease) in Tax Basis (1)	Remaining Life in Years After 3/8/46 (2)	Additional (Reduced) Depreciation Per Day	(3) Additional (Reduced) Depreciation			
				1947	1948	1949	1950
Atoundria	\$ (153,568.52)	6,454	\$(23.79)	\$ (8,683.35)	\$ (8,683.35)	\$ (8,683.35)	\$ (8,683.35)
Andrew Jackson	157,452.54	6,951	21.21	7,741.65	7,741.65	7,741.65	7,741.65
Azalea City	1,408,467.17	6,322	222.79	81,318.35	81,318.35	81,318.35	81,318.35
Blenville	1,493,439.13	6,290	237.43	86,661.95	86,661.95	86,661.95	86,661.95
City of Alua	156,204.05	6,993	18.05	6,588.25	6,588.25	6,588.25	6,588.25
Fairisle	1,945,817.15	5,986	319.88	116,756.20	116,756.20	116,756.20	116,756.20
Fairland	1,877,576.67	7,017	312.05	113,898.25	113,898.25	113,898.25	113,898.25
Fairport	1,245.25	7,292	1.17	62.05	62.05	62.05	62.05
Hastings	163,373.31	6,819	23.96	8,745.40	8,745.40	8,745.40	8,745.40
Jean Lafitte	(179,806.38)	6,392	(28.13)	(10,267.45)	(10,267.45)	(10,267.45)	(10,267.45)
John B. Waterman		7,300					
Kyska	74,476.23	7,181	10.37	3,785.05	3,785.05	3,785.05	3,785.05
Madaket	130,951.68	6,887	19.01	6,938.65	6,938.65	6,938.65	6,938.65
Malden Creek	48,967.55	7,238	6.77	2,471.05	2,471.05	2,471.05	2,471.05
Raphael Semmes	1,811,624.60	6,076	298.16	108,828.40	108,828.40	108,828.40	108,828.40
Wacosta	(90,707.61)	6,600	(13.74)	(5,015.10)	(5,015.10)	(5,015.10)	(5,015.10)
Warrior	(135,940.77)	6,346	(21.11)	(7,705.15)	(5,720.81)(4)	9,614.10	9,614.10
Yaka	178,266.55	6,769	26.34	9,614.10	9,614.10	9,614.10	9,614.10
	\$8,818,838.55			\$521,738.30	\$523,722.64	\$529,443.85	\$539,443.45

- (1) See Exhibit A.
 (2) See Exhibit W of the R.A.R. dated 2/9/55.
 (3) On basis of 365 day year.
 (4) Sold 9/28/48 - reduced depreciation for 271 days in 1948.

[fol. 30] NOTE RE EXHIBITS B, C AND D

EXHIBITS B, C AND D ARE SIMILAR IN ALL RELEVANT RESPECTS TO EXHIBIT A, AND ARE, THEREFORE, OMITTED.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA

ANSWER—Filed February 9, 1960

Comes now the defendant, United States of America, by its attorney of record, Ralph Kennamer, United States Attorney in and for the Southern District of Alabama, and for its answer to plaintiff's complaint states:

Claim One

1. Admits the allegations contained in paragraph 1.
2. Admits the allegations contained in paragraph 2.
3. Denies the allegations contained in paragraph 3.
4. Admits the allegations contained in paragraph 4, except that the income tax return was filed on September 13, 1948, and that the dates of payment were March 15, June 15, September 13, and December 15, 1948.
5. Denies the allegations contained in paragraph 5 but admits that \$115,000 was paid on March 28, 1955; \$196,341.29 was paid on April 25, 1955; that advance payment (9D) was transferred from a 1952 account in the amount of \$1,187,555.90 on June 7, 1951; that an advance payment of \$56,104.83 was made February 12, 1957; that on March 27, 1957, there was credited from 1950 income tax \$6,707.65 and that on April 18, 1957, \$41,971.54 was paid.

[fol. 31] 6. (a) Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 6(a).

(b) Denies the allegations contained in paragraph 6(b).

(c) Denies the allegations contained in paragraph 6(c).

11. Admits the allegations contained in paragraph 11, except denies the allegation contained in the claim for refund and in support thereof not specifically admitted herein.

12. Admits the allegations contained in paragraph 12, except it is denied that the claim for refund was erroneously denied.

13. Denies the allegations contained in paragraph 13.

14. The allegations contained in paragraph 14 require no answer.

Claim Two

15. Defendant adopts the allegations contained in paragraphs 1 and 2 of this answer.

[fol. 32] 16. Denies the allegations contained in paragraph 16.

17. Admits the allegations contained in paragraph 17, except that the dates of payment were March 15, 1949, September 15, 1949, and June 15, 1949.

18. Admits the allegations contained in paragraph 18, except that it alleges that there were two deficiencies assessed for the year 1948; one on March 31, 1955, and the other on March 29, 1957, and except that the payments were made as follows: An advance payment of \$407,431.56 on June 7, 1951; a payment of \$478,000 on March 28, 1955; and a payment of \$154,418.24 on April 25, 1955; an advance payment of \$390,539.13 on February 12, 1957, and a payment of \$194,893.13 on April 18, 1957.

19. (a) Defendant adopts the allegations contained in paragraph 6(a) of this answer.

(b) Denies the allegations contained in paragraph 19(b).

(c) Denies the allegations contained in paragraph 19(c).

(d) Denies the allegations contained in paragraph 19(d).

[fol. 33] 24. Admits the allegations contained in paragraph 24, except denies the allegations contained in the claim for refund and in support thereof which are not specifically admitted in this answer.

25. Admits the allegations contained in paragraph 25, except that it is denied that the claim for refund was erroneously denied.

26. Denies the allegations contained in paragraph 26.

27. The allegations contained in paragraph 27 require no answer.

Claim Three

28. Defendant adopts the allegations of paragraphs 1 and 2 of this answer.

29. Denies the allegations contained in paragraph 29.

30. Admits the allegations contained in paragraph 30, except that the dates of payment were March 15, June 15, September 13, and December 15, 1950.

31. Admits the allegations contained in paragraph 31, except that the payments and dates of payment were as follows: An advance payment of \$304,163.32 on June 7, 1951; a payment of \$215,000 on March 28, 1955; and a payment of \$71,037.73 on April 25, 1955; an advance payment of \$390,539.13 on February 12, 1957; and a payment of \$194,893.13 on April 18, 1957.

[fol. 34] 32. (a) Defendant adopts the allegations contained in paragraph 6(a) of this answer.

(b) Denies the allegations contained in paragraph 32(b).

(c) Denies the allegations contained in paragraph 32(c).

37. Admits the allegations contained in paragraph 37, except defendant denies the allegations contained in the claim for refund and in support thereof which are not specifically admitted in this answer.

38. Admits the allegations contained in paragraph 38, except it is denied that the claim for refund was erroneously denied.

39. Denies the allegations contained in paragraph 39.

40. The allegations contained in paragraph 40 require no answer.

Claim Four

41. Defendant adopts the allegations contained in paragraphs 1 and 2 of this answer.

42. Denies the allegations contained in paragraph 42.

[fol. 35] 43. Admits the allegations contained in paragraph 43, except that the dates and payments were as follows: A payment of \$210,000 on March 15, 1951; a payment of \$210,000 on June 15, 1951; a payment of \$85,365.75 on September 19, 1951; and a payment of \$126,341.44 on December 14, 1951.

44. Admits the allegations contained in paragraph 44, except that the amount was paid by the transfer of an advance payment made on May 26, 1952.

45. Defendant is without knowledge or information at this time sufficient to form a belief as to the truth of the allegations contained in paragraph 45.

46. Admits the allegations contained in paragraph 46, except defendant is without knowledge or information sufficient to form a belief as to the truth of the allegation that the amount was allowed as a credit against plaintiff's federal income taxes for the taxable year 1947.

47. (a) Defendant adopts the allegations contained in paragraph 6(a) of this answer.

(b) Denies the allegations contained in paragraph 47(b).

(c) Denies the allegations contained in paragraph 47(c).

[fol. 36]. 50. Admits the allegations contained in paragraph 50, except defendant denies the allegations contained in the claim for refund and in support thereof which are not specifically admitted in this answer.

51. Admits the allegations contained in paragraph 51, except it is denied that the claim for refund was erroneously denied.

52. Denies the allegations contained in paragraph 52.

53. Defendant denies that plaintiff is entitled to any amount or any relief.

WHEREFORE, defendant prays that plaintiff's actions be dismissed at its cost.

RALPH KENNAMER
United States Attorney.

[File endorsement omitted]

Certificate of Service (omitted in printing).

[fol. 46]

PLAINTIFF'S EXHIBIT A

2-27-61 R.G.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA

SOUTHERN DIVISION
Civil Action No. 2284

WATERMAN STEAMSHIP CORPORATION,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

GENERAL STIPULATION OF FACTS

It is hereby stipulated and agreed by and between the parties hereto that the facts set forth on the attachment [fol. 47] hereto may be taken as true and correct and may be found by the Court, without prejudice however to the right of either party to introduce other and further proof not inconsistent with the facts herein stipulated and subject to the right of either party to object to the relevancy and materiality of any fact hereby stipulated to.

GEORGE A. McCAIN, JR.
As Attorney for Plaintiff

RALPH KENNAMER
As Attorney for Defendant

THEODORE D. PEYSER, JR.

GENERAL STIPULATION OF FACTS

1. This action arises under the provisions of Sections 1346(a)(1) and 1402, of Title 28 of the United States Code.

2. Plaintiff is a corporation organized and existing under the laws of the State of Alabama and having its principal office in the City of Mobile, State of Alabama.

3. On September 13, 1948, pursuant to an extension of time granted to Plaintiff for filing the same, Plaintiff filed its Federal Income Tax Return for the taxable year 1947 with the Collector of Internal Revenue, Birmingham, Alabama, (now District Director of Internal Revenue). Pursuant to the law for payment of taxes in installments, Plaintiff paid to the Collector of Internal Revenue, Birmingham, Alabama, the full amount of tax shown to be due on said return, viz: \$3,343,367.72, in the amounts and on the dates as follows:

<i>Date of Payment</i>	<i>Tax Paid</i>
March 15, 1948	\$1,020,000.00
June 15, 1948	800,000.00
September 13, 1948	687,525.79
December 15, 1948	835,841.93
TOTAL	\$3,343,367.72

4. Upon examination and audit of Plaintiff's Federal Income Tax Return for 1947, the Commissioner of Internal Revenue determined a deficiency in income tax for said year in the amount of \$1,313,846.72, plus interest thereon in the amount of \$289,834.49. The payments made by Plaintiff (partially to the Collector of Internal Revenue, Birmingham, Alabama; and partially to the District Director of Internal Revenue, Birmingham, Alabama) with respect to said deficiency were as follows:

<i>Date of Payment</i>	<i>Tax Paid</i>	<i>Interest Paid</i>
June 7, 1951	\$ 994,900.00	\$ 56,929.28
June 7, 1951	135,726.62	—
November 5, 1954	115,000.00	—
April 14, 1955	—	196,341.29
February 12, 1957	56,104.83	—
March 27, 1957	4,849.50	1,858.15
April 18, 1957	7,265.77	34,705.77
TOTAL	\$1,313,846.72	\$289,834.49

[fol. 49] The amount of tax paid of \$4,849.50 and the amount of interest paid of \$1,858.15 opposite the date of payment of March 27, 1957, in the above schedule were paid by a credit on said date of a net overassessment in Plaintiff's Federal income taxes in the amount of \$4,849.50 and a net overassessment of interest in the amount of \$348.24 for the year 1950, together with interest thereon in the amount of \$1,509.91.

5. On September 14, 1949, pursuant to an extension of time granted to Plaintiff for filing the same, Plaintiff filed its Federal Income Tax Return for the taxable year 1948 with the Collector of Internal Revenue, Birmingham, Alabama, (now District Director of Internal Revenue). Pursuant to the law for payment of taxes in installments, Plaintiff paid to the Collector of Internal Revenue, Birmingham, Alabama, the full amount of tax shown to be due on said return, viz: \$3,189,492.33, in the amounts and on the dates as follows:

<i>Date of Payment</i>	<i>Tax Paid</i>
March 15, 1949	\$ 800,000.00
June 15, 1949	800,000.00
September 15, 1949	390,999.25
September 15, 1949	401,120.00
December 15, 1949	797,373.08
TOTAL	\$3,189,492.33

6. Upon examination and audit of Plaintiff's Federal Income Tax Return for 1948, the Commissioner of Internal Revenue determined a deficiency in income tax for said year in the amount of \$1,141,526.67, plus interest thereon in the amount of \$344,195.24. The payments made by Plaintiff (partially to the Collector of Internal Revenue, Birmingham, and partially to the District Director of Internal Revenue, Birmingham, Alabama) with respect to said deficiency were as follows:

<i>Date of Payment</i>	<i>Tax Paid</i>	<i>Interest Paid</i>
June 7, 1951	\$ 359,400.00	\$ 46,225.51
June 7, 1951	1,806.05	—
November 5, 1954	478,000.00	—
April 14, 1955	—	154,418.24
February 12, 1957	293,318.04	—
April 18, 1957	9,002.58	143,551.49
TOTAL	\$1,141,526.67	\$344,195.24

7. On September 11, 1950, pursuant to an extension of time granted to Plaintiff for filing the same, Plaintiff filed its Federal Income Tax Return for the taxable year 1949 with the Collector of Internal Revenue, Birmingham, Alabama (now District Director of Internal Revenue). Pursuant to the law for payment of taxes in installments, Plaintiff paid to the Collector of Internal Revenue, Birmingham, Alabama, the full amount of tax shown to be due on said return, viz: \$1,473,667.11, in the amounts and on the dates as follows:

<i>Date of Payment</i>	<i>Tax Paid</i>
March 15, 1950	\$ 375,000.00
June 15, 1950	375,000.00
September 13, 1950	355,250.33
December 15, 1950	13,786.78
December 15, 1950	354,630.00
TOTAL	\$1,473,667.11

[fol. 51] 8. Upon examination and audit of Plaintiff's Federal Income Tax Return for 1949, the Commissioner of Internal Revenue determined a deficiency in income tax for said year in the amount of \$924,070.37, plus interest thereon in the amount of \$251,562.94. The payments made by Plaintiff (partially to the Collector of Internal Revenue, Birmingham, Alabama, and partially to the District Director of Internal Revenue, Birmingham, Alabama) with respect to said deficiency were as follows:

<i>Date of Payment</i>	<i>Tax Paid</i>	<i>Interest Paid</i>
June 7, 1951	\$283,300.00	\$ 8,816.02
June 7, 1951	12,047.30	—
November 5, 1954	215,000.00	—
April 14, 1955	—	71,037.73
February 12, 1957	407,203.87	—
April 18, 1957	6,519.20	171,709.19
TOTAL	\$924,070.37	\$251,562.94

9. On September 13, 1951, pursuant to an extension of time granted to Plaintiff for filing the same, Plaintiff filed its Federal Income Tax Return for the taxable year 1950 with the Collector of Internal Revenue, Birmingham, Alabama (now District Director of Internal Revenue). Pursuant to the law for payment of taxes in installments, Plaintiff paid to the Collector of Internal Revenue, Birmingham, [fol. 52] Alabama, the full amount of tax shown to be due on said return, viz: \$631,707.19, in the amounts and on the dates as follows:

<i>Date of Payment</i>	<i>Tax Paid</i>
March 15, 1951	\$ 6,510.00
March 15, 1951	203,490.00
June 15, 1951	210,000.00
September 19, 1951	85,365.75
December 14, 1951	126,341.44
TOTAL	\$631,707.19

10. Upon examination and audit of Plaintiff's Federal Income Tax Return for 1950, the Commissioner of Internal Revenue determined a deficiency in income tax for said year in the amount of \$173,829.97, plus interest thereon in the amount of \$12,482.42. The payments made by Plaintiff (to the District Director of Internal Revenue) with respect to said deficiency were as follows:

<i>Date of Payment</i>	<i>Tax Paid</i>	<i>Interest Paid</i>
May 26, 1952	\$164,312.39	\$12,482.42
May 26, 1952	9,517.58	—
TOTAL	\$173,829.97	\$12,482.42

11. Subsequent to the filing of Plaintiff's Federal Income Tax Return for the taxable year 1950, the Renegotiation Board determined certain excessive profits of Plaintiff which were refundable to said Board. As a result of said determination, the Commissioner of Internal Revenue, upon examination of said return, allowed Plaintiff a credit of \$27,762.00 on June 11, 1954, against its Federal income taxes for the year 1950.

[fol. 53] 12. The Commissioner of Internal Revenue, upon examination of Plaintiff's income tax return for the taxable year 1950, determined for said taxable year a net overassessment against Plaintiff of income taxes in the amount of \$4,849.50, and a net overassessment against Plaintiff of interest in the amount of \$348.24, and allowed said net overassessment, together with interest thereon of \$1,509.91, as a credit against Plaintiff's Federal Income Taxes for the taxable year 1947.

13. On September 26, 1957, and within the time required by law, Plaintiff filed with the District Director of Internal Revenue, Birmingham, Alabama, on United States Treasury Department Form 843, a claim for refund of an overpayment of its Federal income taxes for the taxable year 1947 in the amount of \$376,387.63 or such greater amount as may be legally refundable. The copy of the refund claim attached to the complaint as Exhibit "A" is a true and correct copy of said refund claim and said copy is made

Exhibit S-4 hereto by reference. Said claim for refund was denied by the Commissioner of Internal Revenue in a notice mailed to Plaintiff by Registered Mail on December 16, 1957, by the District Director of Internal Revenue, Birmingham, Alabama.

14. On September 26, 1957, and within the time required by law, Plaintiff filed with the District Director of Internal Revenue, Birmingham, Alabama, on United States Treasury Department Form 843, a claim for refund of an overpayment of its Federal income taxes for the taxable year 1948 in the amount of \$696,522.22 or such greater amount as may be legally refundable. The copy of the refund claim attached to the complaint as Exhibit "B" is a true and correct copy of said refund claim and said copy is made Exhibit S-5 hereto by reference. Said refund claim was [fol. 54] denied by the Commissioner of Internal Revenue in a notice mailed to Plaintiff by Registered Mail on December 16, 1957, by the District Director of Internal Revenue, Birmingham, Alabama.


15. On September 26, 1957, and within the time required by law, Plaintiff filed with the District Director of Internal Revenue, Birmingham, Alabama, on United States Treasury Department Form 843, a claim for refund for an overpayment of its Federal income taxes for the taxable year 1949 in the amount of \$868,844.06 or such greater amount as may be legally refundable. The copy of the refund claim attached to the complaint as Exhibit "C" is a true and correct copy of said refund claim and said copy is made Exhibit S-6 hereto by reference. Said claim for refund was denied by the Commissioner of Internal Revenue in a notice mailed to Plaintiff by Registered Mail on December 16, 1957, by the District Director of Internal Revenue, Birmingham, Alabama.

16. On September 26, 1957, and within the time required by law, Plaintiff filed with the District Director of Internal Revenue, Birmingham, Alabama, on United States Treasury Department Form 843, a claim for refund of an overpayment of its Federal income taxes for the taxable year 1950 in the amount of \$236,801.68 or such greater amount

as may be legally refundable. The copy of the refund claim attached to the complaint as Exhibit "D" is a true and correct copy of said refund claim and said copy is made Exhibit S-7 hereto by reference. Said refund claim was denied by the Commissioner of Internal Revenue in a notice mailed to Plaintiff by Registered Mail on December 16, 1957, by the District Director of Internal Revenue, Birmingham, Alabama.

17. True and correct copies of the Federal Income Tax Returns filed by Plaintiff for the years 1947, 1948, 1949 and [fol. 55] 1950 are attached hereto as Exhibits S-8, S-9, S-10 and S-11, respectively.

18. As a result of the examination and audit by the Commissioner of Internal Revenue of Plaintiff's Federal Income Tax Returns filed for the years 1947, 1948, 1949 and 1950, two written reports dated February 9, 1955, and December 5, 1955, respectively, were made by a Revenue Agent or Revenue Agents of the Internal Revenue Service proposing deficiencies in Plaintiff's Federal income taxes for those years. True and correct copies of said reports are attached hereto as Exhibits S-12 and S-13, respectively.

(See opposite) 

Waterman Steamship Corporation
Mobile, Alabama

(Date Received) 2/2

**WAIVER OF RESTRICTIONS ON ASSESSMENT AND
COLLECTION OF DEFICIENCY IN TAX
AND
ACCEPTANCE OF OVERASSESSMENT**

Pursuant to section 272 (d) of the Internal Revenue Code or corresponding provisions of prior internal revenue laws, the restrictions provided in section 272 (a) of the Internal Revenue Code or corresponding provisions of prior internal revenue laws are hereby waived and consent is given to the assessment and collection of the following deficiencies, together with interest on the tax as provided by law; and the following overassessments are accepted as correct:

DEFICIENCIES

TYPE OF TAX	YEAR ENDED	TAX	PENALTY	TOTAL
Income	Dec. 31, 1947	1,245,626.62		1,245,626.62
Income	Dec. 31, 1948	839,206.05		839,206.05
Income	Dec. 31, 1949	510,347.30		510,347.30
Income	Dec. 31, 1950	173,820.97		173,820.97

OVERASSESSMENTS

TYPE OF TAX	YEAR ENDED	TAX	PENALTY	TOTAL

WATERMAN STEAMSHIP CORPORATION

(Taxpayer)

(Taxpayer)

(Taxpayer)

(SEAL)

By *[Signature]*
Vice President & Treasurer,

2/2/1955


(Date)

NOTE.—The execution and filing of this form at the address shown in the accompanying letter will expedite the adjustment of your tax liability as indicated above. It is not, however, a final closing agreement under section 3760 of the Internal Revenue Code, and does not, therefore, preclude the assertion of a deficiency or a further deficiency in the manner provided by law should it subsequently be determined that additional tax is due, nor does it extend the statutory period of limitation for refund, assessment, or collection of the tax.

If executed with respect to a year for which a JOINT RETURN OF A HUSBAND AND WIFE was filed, this form must be signed by both spouses unless one spouse, acting under a power of attorney, signs as agent for the other.

Where the taxpayer is a corporation, the form shall be signed with the corporate name, followed by the signature and title of such officer or officers of the corporation as are empowered to sign for the corporation, in addition to which the seal of the corporation must be affixed.

[fol. 57]

(See opposite) 

FORM 1907
APR 1954

U. S. TREASURY DEPARTMENT - INTERNAL REVENUE SERVICE

PRELIMINARY STATEMENT

NAME OF TAXPAYER

EXAMINING OFFICER

DATE OF REPORT

Waterman Steamship Corporation

Leo. J. Olan and Matt. Cameron

2/5/55

SUMMARY OF PROPOSED ADJUSTMENTS

YEAR ENDED (OR PERIOD)	INCOME TAX		OTHER TAX (Specify) (NET, OR G/A)	PENALTIES - INCREASE OR (DECREASE)	PARTNERSHIP OR FIDUCIARY INCOME INCREASE OR (DECREASE)
	DEFICIENCY	OVERASSESSMENT			
12/31/47	\$1,245,626.62	\$	\$	\$	\$
12/31/48	339,206.05				
12/31/49	510,247.30				
12/31/50	173,289.97				
TOTALS	\$2,769,199.94	\$	\$	\$	\$
NET DEFICIENCY (Overassessment)					
\$ 2,769,199.94		AGREEMENT SECURED	NAME OF PERSON WITH WHOM FINDINGS DISCUSSED		
		Yes	J. W. Brien Fred Schutte		

PRINCIPAL CAUSES OF CHANGES, AND OTHER INFORMATION

The principal causes of a proposed deficiency are the disallowance of amortization, change of depreciation, and other sundry items.

Changes proposed by this report were discussed with Mr. J. W. Brien, Assistant Controller, and Mr. Fred Schutte, C. A., who agreed. An informal conference was held by which an agreement was secured.

The taxpayer corporation was incorporated under the laws of the State of Alabama, June 10, 1919. On January 1, 1947, the corporation purchased 6,000 shares of its no-par common stock at \$63.00, \$378,000.00. On June 14, 1947, it purchased 2,000 shares of \$63.00 which it resold at the same price on December 2, 1947. On April 4, 1950, it purchased 46 shares at \$72.00, \$3,312.00. On December 31, 1943, it declared a stock dividend of 20,146 shares of no-par stock. The market value of this stock was .69.00 per share; therefore, .250, or \$50,425.00 was credited to Common Stock outstanding and the remainder, \$1,42,397.00 was credited to Capital Surplus. These were the only capital changes during the years under examination.

SCHEDULES AND/OR EXHIBITS ATTACHED

See attached sheets

[fol. 73]

PLAINTIFF'S EXHIBIT F

2-8-61

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION
Civil Action No. 2284

WATERMAN STEAMSHIP CORPORATION,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

*STIPULATION OF FACTS—
SECTION 9 DEPRECIATION ISSUE*

It is hereby stipulated and agreed by and between the parties hereto that for purposes of the Section 9 depreciation issue involved in this cause the facts set forth on the attachment hereto may be taken as true and correct and may be found by the Court, without prejudice however to the right of either party to introduce other and further proof not inconsistent with the facts herein stipulated and sub-[fol. 74] ject to the right of either party to object to the relevancy and materiality of any fact hereby stipulated to.

JOHN W. McCONNELL, JR.
As Attorney for Plaintiff

RALPH KENNAMER
As Attorney for Defendant

THEODORE D. PEYSER, JR.

U.S. DISTRICT COURT
SOU. DIST. ALA.
FILED IN CLERK'S OFFICE
FEB. 1, 1961
WILLIAM J. O'CONNOR
CLERK

**SECTION 9 DEPRECIATION ISSUE—
STIPULATION OF FACTS**

1. At various times during the years 1942 through 1946 Plaintiff purchased 18 vessels from the United States Maritime Commission (hereinafter referred to as "Maritime") pursuant to Section 509 of the Merchant Marine Act, 1936, c.858, 49 Stat. 1985 (46 U.S.C. 1952 Ed., Sec. 1159). The total purchase price of the 18 vessels is stated in Contract No. MCc42281, Addendum No. 1, dated as of June 11, 1951, to be \$49,582,767.02. At the time of the original purchases of the said vessels \$6,449,107.02 was paid in cash, \$2,609,600.00 was paid through an allowance for 4 vessels traded in and delivered to Maritime, and vessel mortgages were given by Plaintiff in the amount of \$40,524,060.00 [fol. 75] representing the balance of said \$49,582,767.02. No gain was recognized for tax purposes on the trade-in of the 4 vessels by reason of Section 510(e) of the Merchant Marine Act, 1936 (46 U.S.C. 1952 Ed., Sec. 1060(c)). The total adjusted basis of the 4 vessels traded in was \$175,876.40 at the time they were traded in. From the dates the vessels were purchased through March 7, 1946, Plaintiff made cash payments totaling \$9,786,339.19 in reduction of said mortgage indebtedness, leaving a balance due on the mortgages as of March 8, 1946, of \$30,737,720.81.

2. Upon delivery of 16 of said vessels to Plaintiff, they were chartered by the Government until various dates in 1946. At various times during the charters, the Government paid charter hire to the Plaintiff. On its Federal income tax returns for the year 1942 through 1946 Plaintiff reported such charter hire as income and deducted depreciation for said 18 vessels.

3. As of March 7, 1946, and prior to any adjustment in price under Section 9 of the Act, the basis of the 18 vessels claimed by Plaintiff and approved by Internal Revenue Service was \$47,149,043.42 (after adjustment for unrecognized gain on the 4 vessels traded in and prior to certain other adjustments not here in controversy), computed as follows:

Total cash paid as down payment and in reduction of mortgage indebtedness through 3/7/46	\$16,235,446.21
Adjusted basis of 4 vessels traded in	175,876.40
Balance of mortgage indebtedness as of 3/7/46	30,737,720.81
	<hr/>
Basis as of 3/7/46	\$47,149,043.42

[fol. 76] 4. On March 8, 1946, Congress enacted the Merchant Ship Sales Act of 1946, c. 82, 60 Stat. 41 (50 U.S.C. Appendix 1952 ed., Sec. 1735), hereinafter referred to as "the Act". Under Section 4, citizens of the United States were given the right to purchase from the United States Maritime Commission war-built vessels at the statutory sales price defined in Section 3(d). Purchasers were required to pay at the time of sale at least 25% of the statutory sales price and the balance was payable in not more than twenty equal annual installments with interest at 3½% per annum.

By January 15, 1951, 843 ships had been sold under Section 4 of the Act. There were 264 vessels sold before March 8, 1946 and eligible for adjustment under Section 9. Plaintiff does not, however, consider the preceding sentences of this paragraph relevant to this proceeding.

Section 9 of the Act authorizes adjustments in price, upon application to Maritime, of certain vessels sold by Maritime to citizens of the United States prior to March 8, 1946.

5. Plaintiff filed an application with Maritime for an adjustment in the purchase price of each of the 18 vessels under Section 9 of the Act and said application was subsequently approved. On December 30, 1946, Plaintiff and Maritime entered into an "Interim Agreement" for an interim adjustment in the purchase price of the 18 vessels, said interim adjustment being subject to a final determination. A copy of the Interim Agreement is attached hereto as Exhibit S-1. The Interim Agreement provided that Plaintiff's unadjusted mortgage indebtedness as of March 8, 1946, with respect to the 18 vessels would be adjusted pursuant to Section 9(b), (2) and (3) of the Act by giving credit to the

[fol. 77] Plaintiff for the amount by which such unadjusted mortgage indebtedness exceeded 75 per centum of the statutory sales price of the 18 vessels, subject to a further adjustment upon the determination of the readjusted trade-in allowance of the 4 vessels traded in. The Interim Agreement provided further that the net credit to Plaintiff which resulted from subtracting the credit in favor of Maritime under Section 9(a)(6) (charter hire paid by United States to Plaintiff for the 18 vessels) from the sum of the credits in favor of the Plaintiff under Section 9(b)(1) and (4) (cash payments made by Plaintiff to Government on purchase price of the 18 vessels in excess of 25 Per centum of statutory sales price as of March 8, 1946), Section 9(b)(5) (the amount equal to interest on the cost of the 18 vessels less the amount of any trade-in allowance), Section 9(b)(6) (the amount that would have been paid by the United States to Plaintiff as charter hire for the 4 vessels traded in), and Section 9(b)(8) (the amount of overpayment of Federal taxes by Plaintiff), would be credited by Maritime on the mortgage indebtedness as adjusted under Section 9(b)(2) and (3).

6. By letter of January 3, 1951, the Commission forwarded certain schedules to the Plaintiff for its review and concurrence. Copy of said letters and schedules is attached hereto as Exhibit S-2. On sheet 6 of Schedule II, attached to Exhibit No. S-2, there is an item reading as follows: "18. Total net credit to owner before tax adjustment * * * \$20,038,698.41". Defendant contends that the figure of \$20,038,698.41 has no bearing on the cost of the vessels. As provided in the Final Agreement of June 11, 1951, the amount of the net tax credit under Section 9(b)(8) of the Act to which Plaintiff was entitled was subsequently determined to be \$430,205.66.

7. On June 11, 1951, Plaintiff and Maritime entered into a "Final Agreement" for a final adjustment in the price of [fol. 78] the 18 vessels pursuant to Section 9 of the Act, said Final Agreement being Addendum No. 1 to the Interim Agreement. A copy of the Final Agreement is attached hereto as Exhibit S-3.

8. The computations made with respect to the 18 vessels pursuant to the provisions of Section 9(b) are as follows:

(a) Section 9(b)(1) provides that, for each vessel, the applicant shall be given a credit for the excess of the cash payments made before March 8, 1946, over 25% of the statutory sales price and that, where cash payments made before March 8, 1946, do not equal 25% of the statutory sales price, the applicant shall pay to Maritime the difference between the amount so paid and 25% of the statutory sales price. Section 9(b)(4) provides that the applicant shall be credited with the excess of the sum of the cash payments made upon the original purchase price of the vessels, plus the adjusted trade-in allowance for the vessels traded in, over the statutory sales price of the vessels to the extent not credited under Section 9(b)(1). Under Section 3(d) of the Act and the Final Agreement Maritime determined the total statutory sales price of the 18 vessels to be \$17,997,981.84. The total net credit to Plaintiff under Section 9(b)(1) and (4) was \$11,735,950.74, computed as follows:

Total cash paid as down payment and in reduction of mortgage indebtedness through 3/7/46	\$16,235,446.21
Less 25% of statutory sales price on the 18 vessels	4,499,495.47
<hr/> Total net credit under Sec. 9(b)(1) and (4)	<hr/> \$11,735,950.74

[fol. 79] (b) Sections 9(b)(2) and 9(b)(3) provide that the applicant's indebtedness under any mortgage to the United States with respect to the vessel shall be adjusted and that the adjusted mortgage indebtedness shall be in an amount equal to the excess of the statutory sales price of the vessel over the sum of the cash payment retained by Maritime under Section 9(b)(1) plus the readjusted trade-in allowance (determined under Section 9(b)(7)) with respect to any vessel exchanged by the applicant on the original purchase. Pursuant to Section 9(b)(7) and the Final Agree-

ment, Maritime determined that the total readjusted trade-in allowance on the 4 vessels traded in by Plaintiff was \$312,557.44. Pursuant to the provisions of Section 9(b)(2) and (3), Plaintiff's mortgage indebtedness was reduced by \$17,551,791.88 from \$30,737,720.81 to \$13,185,928.93, computed as follows:

Balance of mortgage indebtedness as of 3/7/46	\$30,737,720.81
Statutory sales price	\$17,997,981.84
Less 25% of statutory sales price	4,499,495.47
Less readjusted trade-in allowance	312,557.44
Adjusted mortgage indebtedness as of 3/8/46 under Sec. 9(b)(2) & (3)	13,185,928.93
Reduction in mortgage indebtedness as of 3/8/46 under Sec. 9(b)(2) & (3)	\$17,551,791.88

[fol. 80] (c) Section 9(b)(5) provides that, for each vessel, the applicant shall be given a credit equal to interest at the rate of $3\frac{1}{2}\%$ per annum on the original purchase price of the vessel, less any trade-in allowance, from the date of delivery to March 8, 1946. By virtue of this provision, Plaintiff was allowed credits totaling \$2,686,262.15.

(d) Section 9(b)(6) provides that, for each vessel, Maritime shall be allowed a credit equal to the charter hire paid to the applicant for use of the vessel under any charter party made prior to March 8, 1946. By virtue of this provision, Maritime was allowed credits totaling \$13,430,430.94.

(e) Section 9(b)(6) also provides that the applicant shall be allowed a credit of the amount that would have been paid by the United States as charter hire for bare boat use of vessels traded in on the original purchase for the period from the date on which the vessel traded in was delivered to

Maritime to March 8, 1946. By virtue of this provision, Plaintiff was allowed credits totaling \$1,495,124.58.

(f) Section 9(b)(8) provides that a credit shall be allowed to the applicant if an overpayment of taxes results from the application of Section 9(c)(1) and a credit shall be allowed to Maritime if a deficiency results from the application of Section 9(c)(1). Section 9(c)(1) provides that the applicant's Federal income taxes shall be recomputed on the following assumptions:

(1) Depreciation and amortization on the vessels up to March 8, 1946, shall not be allowable.

(2) Charter hire credited to Maritime under Section 9(b)(6) was never received by the applicant.

(3) Amounts credited to the applicant under Section 9(b)(5) and 9(b)(6) were income for the taxable year in which falls March 8, 1946:

[fol. 81] Recomputation of Plaintiff's taxes under these provisions resulted in a calculated overpayment of \$3,521,125.76 and a deficiency of \$3,090,920.10, or a net overpayment of \$430,205.66, for which Plaintiff was allowed credit.

(g) Section 9(b)(8) provides that, if the sum of the credits in favor of the applicant exceeds the sum of the credits in favor of Maritime, Maritime shall pay such excess to the applicant. In this case, the sum of the credits in favor of applicant exceeded the sum of the credits in favor of Maritime by \$2,917,112.19, computed as follows:

~~Credits in favor of plaintiff—~~

Cash payments in excess of 25% of the statutory sales prices credited to Plaintiff under Section 9(b)(1) & (4) \$11,735,950.74

Interest credited to Plaintiff under Section 9(b)(5) 2,686,262.15

Charter hire credited to Plaintiff under Section 9(b)(6) 1,495,124.58

Tax credited to Plaintiff under Section 9(b)(8) 430,205.66

\$16,347,543.13

Credit in favor of Maritime—

Charter hire credited to Maritime under Section 9(b)(6) 13,430,430.94

\$ 2,917,112.19

[fol. 82] In the Final Agreement, the sum of \$2,917,112.19 is sometimes referred to as "the net cash credits of the applicant under Section 9" and sometimes referred to as "the final cash adjustment in favor of the applicant under Section 9". Maritime did not give Plaintiff a check for said sum of \$2,917,112.19 but pursuant to agreement between Plaintiff and Maritime, the mortgage indebtedness was reduced by \$2,917,112.19 as of March 8, 1946.

9. Pursuant to the provisions of Section 9 of the Act and the Final Agreement, Plaintiff's mortgage indebtedness was reduced as of March 8, 1946, by \$20,554,941.77 from \$30,737,720.81 to \$10,182,778.04, computed as follows:

Balance of original mortgage indebtedness
as of 3/7/46; (8 (b) hereof) \$30,737,720.81

Reduction in mortgage indebtedness as of
3/8/46 under Sec. 9(b)(2) & (3); (8 (b)
hereof) \$17,551,791.88

Computation of net credit to Plaintiff under
Sec. 9 (b)(1), (4), (5), (6) and (8) applied
to reduce mortgage indebtedness as of
3/8/46:

Sec. 9(b)(1) & (4); (8(a) hereof) \$11,735,950.74

Sec. 9(b)(5); (8(c) hereof) 2,686,262.15

Sec. 9(b)(6); (8(d) hereof)..... (13,430,430.94)

Sec. 9(b)(6); (8(e) hereof) 1,495,124.58

Sec. 9(b)(8); (8(f) hereof) 430,205.66

\$ 2,917,112.19

[fol. 83] Total amount by which mortgage
indebtedness reduced under Sec. 9 and
Final Agreement as of 3/8/46 (\$20,468,904.07)

Cash paid in reduction of mortgage in-
debtedness as of 3/8/46 per Final Agree-
ment (\$ 86,037.70)

The amount to which original mortgage
indebtedness was reduced as of 3/8/46 as
shown in Final Agreement \$10,182,779.04

The cash payment of \$86,037.70 set forth above was made
by Plaintiff to Maritime in reduction of the mortgage in-
debtedness as of March 8, 1946, pursuant to the Final
Agreement. Said cash payment was exclusive of and in ad-
dition to any benefit to Plaintiff under the provisions of
Section 9.

10. In the years 1946 through 1948, Plaintiff bought 32
vessels from the Commission under Section 4 of the Act.
For each vessel, Plaintiff paid an amount equal to the statu-

tory sales price and has treated this amount as the cost of the vessel for tax purposes.

11. Plaintiff contends that, pursuant to the provisions of Section 9 of the Act, the price of the 18 vessels was adjusted and reduced by \$20,468,904.07 and that the basis of said vessels as of March 7, 1946, of \$47,149,043.42 was also adjusted and reduced by \$20,468,904.07. Plaintiff therefore contends that the basis of the 18 vessels as of March 8, 1946, was \$26,680,139.35, computed as follows:

Total cash paid as down payment and in reduction of mortgage indebtedness through 3/7/46	\$16,235,446.21
[fol. 84] Adjusted basis of 4 vessels traded in	175,876.40
Cash paid in reduction of mortgage indebtedness as of 3/8/46 per Final Agreement	86,037.70
Remaining mortgage indebtedness as of 3/8/46 after adjustments	10,182,779.04
Basis as of 3/8/46	\$26,680,139.35

12. Defendant contends that pursuant to the provisions of Section 9 of the Act the price of the 18 vessels was adjusted and reduced to \$17,997,981.84, their statutory sales prices and the price Plaintiff would have had to pay for the vessels if they had been sold by Maritime to Plaintiff on March 8, 1946, and not before that date. Defendant therefore contends that the unadjusted basis of the 18 vessels as of March 8, 1946, was \$17,997,981.84.

13. Plaintiff owned all of the 18 vessels during the calendar years 1947 through 1950, except one of the vessels (SS Warrior) which it sold on September 28, 1948: Plaintiff is therefore entitled to a depreciation deduction for all 18 of said vessels for the calendar year 1947 and for that part of the calendar year 1948 through September 28, 1948, and a depreciation deduction for 17 of said vessels for that part of the calendar year 1948 from September 29, 1948, through December 31, 1948, and for the calendar years 1949 and 1950. In order to avoid unnecessary repetition and further

detailed computations, Plaintiff and Defendant hereby stipulate to the following:

[fol. 85] (a) Plaintiff contends that the basis of the 17 vessels owned by Plaintiff subsequent to September 28, 1948, adjusted for unrecognized gain on the trade-in of 3 vessels was \$25,902,565.91, computed as set forth in Paragraph 11 hereof after making adjustments in said computation due to the sale of the SS Warrior (said basis being subject to certain adjustments not here in controversy).

(b) Defendant contends that the unadjusted basis of the 17 vessels owned by Plaintiff subsequent to September 28, 1948, was \$17,030,195.84 (said unadjusted basis being subject to certain adjustments not here in controversy).

(c) If the Court determines that the basis of all 18 of the vessels was \$26,680,139.35 as contended by Plaintiff in Paragraph 11 hereof, the proper basis of the 17 vessels owned by Plaintiff subsequent to September 28, 1948, adjusted for unrecognized gain on the trade-in of 3 vessels was \$25,902,565.91 as contended by Plaintiff in (a) of this paragraph.

(d) If the Court determines that the unadjusted basis of all 18 of the vessels was \$17,997,981.84 as contended by Defendant in Paragraph 12 hereof, the proper basis of the 17 vessels owned by Plaintiff subsequent to September 28, 1948, was \$17,030,195.84 as contended by Defendant in (b) of this paragraph.

14. In computing Plaintiff's Federal income tax liability for the years 1947 through 1950, Plaintiff claimed, and the Commissioner of Internal Revenue allowed, a deduction for depreciation on the vessels in question. In Plaintiff's Federal Income Tax Returns for the years 1947 through 1950, Plaintiff used the statutory sales prices (with certain adjustments) of the vessels as the basis for depreciation and the Commissioner, upon audit of said Returns, also used and approved the statutory sales prices (with certain adjustments) of the vessels as the basis for depreciation. Upon said audit, the Commissioner used and approved as the basis for depreciation of the 18 vessels owned by Plain-

tiff through September 28, 1948, the total statutory sales prices of \$17,997,981.84, adjusted downward on account of net unrecognized gain on the trade-in of the 4 vessels traded in of \$136,681.04 (computed by subtracting the adjusted basis of \$175,876.40 from the adjusted trade in allowance of \$312,557.44) and adjusted further in certain other amounts.

15. On its Federal Income Tax Return for the year 1948 Plaintiff reported and the Commission of the Internal Revenue Service allowed a gain on the sale of the SS Warrior one of the 18 vessels in question, using as its basis its statutory sales price with certain adjustment.

U.S. DISTRICT COURT
SOU. DIST. ALA.
FILED IN CLERK'S OFFICE

FEB. 1, 1961

WILLIAM J. O'CONNOR
CLERK

[fol. 87]

EXHIBIT S-3

CONTRACT NO. MCc-42281
ADDENDUM NO. 1

FINAL AGREEMENT
FOR ADJUSTMENT FOR PRIOR SALES
PURSUANT TO SECTION 9 OF THE
MERCHANT SHIP SALES ACT OF 1946

THIS FINAL AGREEMENT (herein called "Agreement") entered into as of the 11th day of June, 1951, between the UNITED STATES OF AMERICA (herein called "Government"), represented by the DEPARTMENT OF COMMERCE (MARITIME ADMINISTRATION) (herein called "Maritime"), and WATERMAN STEAMSHIP CORPORATION (herein called "Applicant"), a corporation organized and existing under the laws of the State of Alabama.

WITNESSETH THAT:

WHEREAS:

I. As of the 30th day of December, 1946, the United States Maritime Commission (herein called "Commission") and the Applicant entered into an interim agreement, designated as Contract No. MCc-42281, for a tentative adjustment in the price of 18 vessels (herein called "War-built Vessels"), of the C2-S-E1 type, described in exhibit A, attached hereto and made a part hereof, pursuant to the provisions of section 9 of the Merchant Ship Sales Act of 1946 (herein called "Act");

II. Maritime has succeeded to all of the rights, powers, duties, and functions of the Commission under the Act;

[fol. 88] III. Maritime has now determined the net sum of the credits in favor of the Applicant as the result of section 9 adjustments, exclusive of tax adjustments;

IV. On the basis of said determination by Maritime, the Bureau of Internal Revenue has now determined the amount of overpayments and deficiencies in Federal taxes of the Applicant as provided in sub-section (c)(1) of section 9 of the Act; and

V. The Applicant and the Government have mutually agreed to settle, fully and finally, their respective rights and obligations under section 9 of the Act in the manner and upon the terms set forth below;

NOW, THEREFORE, the parties hereto agree as follows:

ARTICLE 1

IDENTIFICATION AND CONSTRUCTION OF THE WAR-BUILT VESSELS

The aforesaid exhibit A sets forth a description of the War-built Vessels by their (1) names; (2) official numbers, and (3) hull numbers, together with (4) the numbers and dates of the contracts between the Commission and the

builder which constructed the War-built Vessels (herein called "Construction Contracts"), (5) the numbers and dates of the contracts of purchase (herein called "Purchase Contracts") of the War-built Vessels from the Commission by the Applicant, and (6) the dates of delivery of the War-built Vessels from the yard of the builder to the Applicant.

[fol. 89]

ARTICLE 2

CREDITS IN FAVOR OF APPLICANT

The original purchase prices of the War-built Vessels under the Purchase Contracts, as set forth on line 1 of each of the sheets 1, 3, and 5 of exhibit B, attached hereto and made a part hereof, are subject to deductions, in the case of the SS's AFOUNDRIA, JEAN LaFITTE, WACOSTA, and WARRIOR, in the amounts of the original trade-in allowances, allocable among the aforesaid four of the War-built Vessels as set forth on said line 1 of said sheets 1, 3, and 5 of said exhibit B, and line 10 of exhibit E, attached hereto and made a part hereof.

Said original purchase prices, less said original trade-in allowances, are subject to further deductions in the amount of the balance of the original mortgages on the War-built Vessels up to March 8, 1946, the date of enactment of the Act, as set forth on line 1 of sheets 1, 3, and 5 of said exhibit B, making the amount of the cash payments made as of March 8, 1946, (after adjustments of the original purchase prices for the original trade-in allowances and the balance of the original mortgages up to March 8, 1946) total \$16,235,446.21, as set forth on said line 1 of sheet 5 of exhibit B, which said sum is allocable among the War-built Vessels as set forth on said line 1 of sheets 1, 3, and 5 of said exhibit B.

The statutory sales price for each of the War-built Vessels as of March 8, 1946, adjusted on account of the presence and the absence of desirable features, as provided in subsections (d)(2) and (d)(3) of section 3 of the Act, and adjusted for normal and war-service depreciation, as provided in subsection (d)(4) of section 3 of the Act, is as

set forth on line 8 of each of the three sheets of exhibit D, [fol. 90] attached hereto and made a part hereof. In the case of the SS's AFOUNDRIA, AZALEA CITY, BIENVILLE, FAIRISLE, FAIRLAND, JEAN LaFITTE, RAPHAEL SEMMES, WACOSTA, and WARRIOR, the aforesaid statutory sales price, adjusted as aforementioned, is less than the floor price under subsection (d) of section 3 of the Act, wherefore the statutory sales price of each of said nine of the War-built Vessels is adjusted to the floor price of a standard vessel of the same type, adjusted, on account of the presence and the absence of desirable features, as set forth on line 12 of exhibit D. Therefore, the statutory sales prices of the War-built Vessels as of March 8, 1946, adjusted for the presence and the absence of desirable features, depreciation, and the floor price, total \$17,997,981.84, as set forth on line 13 of sheet 6 of exhibit B, allocable among the War-built Vessels as set forth on line 11 of sheets 2, 4, and 6 of said exhibit B. Twenty-five per centum of said statutory sales prices, adjusted as aforementioned, totals \$4,499,496.47, as set forth on line 2 of sheet 5 of exhibit B, allocable among the War-built Vessels as set forth on line 2 of sheets 1, 3, and 5 of said exhibit B.

Accordingly, the amounts to be credited to the Applicant, pursuant to subsections (b)(1) and (b)(4) of section 9 of the Act, as the excess of the sum of the cash payments made as of March 8, 1946, upon the original purchase price of the War-built Vessels, adjusted by deduction of the original trade-in allowances and the balance of the original mortgages as of March 8, 1946, over 25 per centum of the statutory sales prices of the War-built Vessels as of March 8, 1946, adjusted for the presence and the absence of desirable features, depreciation, and the floor price, is \$11,735,950.74, as set forth on line 3 of sheet 5 of exhibit B, allocable among the War-built Vessels as set forth on line 3 of sheets 1, 3, and 5 of said exhibit B.

[fol. 91] The net amount to be credited to the Applicant, pursuant to the provisions of subsection (b)(5) of section 9 of the Act, as the equivalent of interest at the rate of

3½ per centum per annum from the date of the original delivery of the War-built Vessels to the Applicant up to March 8, 1946, on \$46,973,167.02, the original purchase prices less the original trade-in allowances (line 3 of sheet 3 of exhibit C, attached hereto and made a part hereof.) reduced by the interest on the original mortgage indebtedness of the Applicant accrued up to March 8, 1946, and unpaid, totals \$2,686,262.15, as set forth on line 4 of sheet 5 of exhibit B, allocable among the War-built Vessels as set forth on line 4 of sheets 1, 3, and 5 of said exhibit B, and computed as set forth in exhibit C.

The amount to be credited to the Applicant as the charter hire which would have been paid on vessels exchanged by the Applicant (as set forth on sheet 2 of exhibit F, attached hereto and made a part hereof) on the original purchase price of the SS's AFOUNDRIA, JEAN LaFITTE, WACOSTA, and WARRIOR, for the period beginning with the date of delivery of the exchanged vessels to the Commission and extending up to March 8, 1946, pursuant to the provisions of sub-section (b)(6) of section 9 of the Act, totals \$1,495,124.58, as set forth on line 5 of sheet 5 of exhibit B, allocable among the aforesaid four of the War-built Vessels as set forth on line 5 of said exhibit B.

The sum of the aforementioned credits for excess cash payments, interest, and charter hire which would have been paid on vessels traded in, is thus \$15,917,337.47, as set forth on line 6 of sheet 5 of exhibit B, allocable among the War-built Vessels as set forth on line 6 of sheets 1, 3, and 5 of said exhibit B.

[fol. 92]

ARTICLE 3

CREDITS IN FAVOR OF THE GOVERNMENT

Pursuant to the provisions of subsection (b)(6) of section 9 of the Act, the amount paid by the Government as charter hire for the use of 16 of the War-built Vessels under charters made prior to March 8, 1946, totals \$13,430,430.94, allocable among said 16 of the War-built

Vessels as set forth on line 7 of sheets 1, 3, and 5 of exhibit B, and allocable as between the time charters and the bareboat charters of the War-built Vessels as set forth on sheet 1 of exhibit F, attached hereto and made a part hereof.

According to the Internal Revenue Bureau, the total net over-payment of Federal taxes by the Applicant, resulting from the application of the provisions of subsection (c)(1) of section 9 of the Act, is \$430,205.66, which is the sum of \$3,521,125.76 (over-payments) less the sum of \$3,090,920.10 (deficiencies), which said overpayments and deficiencies are set forth on line 8 of sheet 5 of exhibit B, and allocable among 17 of the War-built Vessels as set forth on line 8 of sheets 1, 3, and 5 of said exhibit B.

Accordingly, the net sum of the credits in favor of the Government is \$13,000,225.28, which is the aforesaid sum of \$13,430,430.94 less the aforesaid sum of \$430,205.66, and which is allocable among the War-built Vessels as set forth on line 9 of sheets 1, 3, and 5 of exhibit B.

ARTICLE 4

NET CASH CREDITS •

The net amount of the final cash adjustment in favor of the Applicant under section 9 of the Act is \$2,917,112.19, [fol. 93] which is the aforesaid sum of \$15,917,337.47 less the aforesaid sum of \$13,000,225.28, and which is allocable among the War-built Vessels as set forth on line 10 of sheets 1, 3, and 5 of exhibit B.

ARTICLE 5

MORTGAGE ADJUSTMENT AND DISPOSITION OF APPLICANT'S NET CASH CREDITS

The initial adjusted mortgage indebtedness of the Applicant as of March 8, 1946, under subsections (b)(1), (b)(2), and (b)(3) of section 9 of the Act, totals \$13,185,928.93, as set forth on line 16 of sheet 6 of exhibit B, allocable among the War-built Vessels as set forth on line 14 of sheets 2, 4, and 6 of said exhibit B.

Notwithstanding any other provision of this Agreement and pursuant to the provisions of article XI of Contract No. MCc-42281, to which this Agreement is Addendum No. 1, the adjusted mortgage-indebtedness of the Applicant on the SS's ANDREW JACKSON, CITY OF ALMA, HASTINGS, KYSKA, MADAKET, MAIDEN CREEK and YAKA (upon the cost of which said seven of the War-built Vessels the cash payments shown in exhibit H, attached hereto and make a part hereof, have been made by the Applicant under the provisions of section 112(f) of the Internal Revenue Code relating to involuntary conversions) is hereby further adjusted by reducing said indebtedness in the amount of \$3,003,149.89, as set forth on line 17 of exhibit B, which said sum is allocable among the seven vessels as set forth on said line 17 of said exhibit B.

Accordingly, the final, adjusted mortgage indebtedness of the Applicant as of March 8, 1946, on the 18 War-built [fol. 94] Vessels totals \$10,182,779.04 (line 18 of sheet 6 of exhibit B) which is the aforesaid sum of \$13,185,928.93 less the aforesaid sum of \$3,003,149.89 (line 17 of sheet 6 of exhibit B).

By reason of the aforesaid reduction in the mortgage indebtedness of the Applicant in the amount of \$3,003,149.89, whereas the net cash credits of the Applicant under section 9 of the Act total only \$2,917,112.19, the Applicant agrees that, upon its receipt of an invoice from the Government, the Applicant will promptly pay to the Government the amount of \$101,378.06, consisting of the sum of \$86,037.70, as set forth on line 12 of sheet 5 of exhibit B, (which is the aforesaid sum of \$3,003,149.89 less the aforesaid sum of \$2,917,112.19), plus interest, totaling \$15,340.36, computed at the rate of 3½ per centum per annum from March 8, 1946, to June 11, 1951, the effective date of this Agreement.

In addition to the amount of \$101,378.06 covered in the above paragraph, there is due to be refunded to the Commission, with interest, the sum of \$170,716.24, representing the net excess of the interim credits in favor of the Applicant pursuant to paragraph (f) of article XII of the

aforesaid Contract No. MCo-42281 and based on the preliminary determination of the adjustments, which have been credited by the Commission as of December 30, 1946, the date of the interim agreement, on the initial mortgage indebtedness of the Applicant on eleven of the War-built Vessels which were designated by the Applicant, namely, the SS's AFOUNDRIA, AZALEA CITY, BIENVILLE, FAIRISLE, FAIRLAND, FAIRPORT, JEAN LaFITTE, JOHN B. WATERMAN, RAPHAEL SEMMES, WACOSTA, and WARRIOR. Accordingly, the Applicant agrees that, upon the receipt of an invoice from the Government, the Applicant will promptly pay to the Government the sum of \$170,716.24, plus interest totaling [fol. 95] \$26,568.59, computed at the rate of 3½ per centum per annum from December 30, 1946, (the date as of which that sum was tentatively credited by the Commission on the initial adjusted mortgage indebtedness of the Applicant on the eleven of the War-built Vessels named in the preceding sentence) to June 11, 1951, the effective date of this Agreement, making a total amount of \$197,284.83.

The Applicant agrees, therefore, that, upon receipt of an invoice from the Government, as aforesaid, it will promptly pay to the Government, by check, the grand total of \$298,662.89 (which is the aforesaid sum of \$101,378.06 plus the aforesaid sum of \$197,284.83).

Payments of principal and interest on and after March 8, 1946, against the mortgage indebtedness, if any, of the Applicant with respect to the War-built Vessels, in excess of the amounts of principal and interest which would have been payable had such adjustment been in effect on and after March 8, 1946, shall be applied as a further payment against the mortgage indebtedness of the Applicant with respect to the War-built Vessels or other vessels of the Applicant, whether or not matured, (such indebtedness to be designated by the Applicant), effective in either instance as of the date each such excess payment actually was made. Any balance of such moneys remaining after such application shall be paid to the Applicant in cash.

ARTICLE 6

EXCESS CHARTER HIRE FOR USE ON AND AFTER MARCH 8, 1946

The amount to which the Government is entitled, under subsection (c) of section 9 of the Act, as a refund of excess [fol. 96] charter hire for the period beginning March 8, 1946, to date of redelivery, for use of 16 of the War-built Vessels, totals, net, \$368,377.38 (which said sum has heretofore been refunded to the government by the Applicant), as set forth on line 21 of sheet 6 of exhibit B, allocable among the 16 vessels as set forth on line 21 of sheets 2, 4, and 6 of said exhibit B, which said sum consists of \$352,559.32, covering excess charter hire paid on and after March 8, 1946, and \$15,818.06, covering excess charter hire allowed in the settlement of the redelivery obligations of the Government, as set forth in exhibit G, attached hereto and made a part hereof.

ARTICLE 7

FINALITY OF SETTLEMENT

The adjustments and credits provided for in this Agreement are final and complete as between the parties with respect to the purchase price of the War-built Vessels, and constitute an agreement as to the full, final, and complete discharge of the respective liabilities of the parties, one to the other, under the provisions of all contracts between the parties respecting the prices of the War-built Vessels and under the provisions of the Act.

ARTICLE 8

PROVISIONS REQUIRED BY SECTION 9(c) OF THE ACT

The Applicant, on behalf of itself and all affiliated interests as defined in subsection (g) of section 3 of the Act, (for whom the Applicant warrants it has authority to make such agreement) agrees with Maritime that:

- (1) Depreciation and amortization, allowed or allowable with respect to the War-built Vessels up to March 8, [fol. 97] 1946, for Federal tax purposes, shall be treated as not having been allowable; amounts credited to the Applicant, under subsections (b)(5) and (b)(6) of section 9 of the Act, shall be treated for Federal tax purposes as having been received and accrued as income in the taxable year in which falls March 8, 1946.
- (2) The liability of the Government for use (exclusive of service, if any, required under the terms of the charter) of any of the War-built Vessels covered by this Agreement, on or after March 8, 1946, under any charter party shall not exceed 15 per centum per annum of the statutory sales price of any such of the War-built Vessels as of March 8, 1946.
- (3) The compensation, if any, paid to the Applicant by the Government for use, if any, of all or any of the War-built Vessels during the existence of the national emergency declared by the President on May 27, 1941 (which terminated on April 28, 1952, by Proclamation 2974 of the President), pursuant to a taking, or pursuant to bareboat charters made, on or after March 8, 1946, has been adjusted so that it is in no event greater than 15 per centum of the statutory sales prices as of such date.

ARTICLE 9

STATUTORY REQUIREMENTS

The Applicant warrants that it has not employed any Member of Congress, either with or without compensation, as an attorney, agent, officer, or director in connection with this Agreement. No Member of or Delegate to Congress, [fol. 98] nor Resident Commissioner, has been or shall be admitted to any share or part of this Agreement, or to any benefit that may arise therefrom, except as provided in

section 116 of the Act approved March 4, 1909 (35 Stat. 1109).

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in quintuplicate as of the 11th day of June, 1951.

UNITED STATES OF AMERICA
By: DEPARTMENT OF COMMERCE
(MARITIME ADMINISTRATION)

By: G. B. PROWSE
For: L. C. SMITH
Acting Chief Division of Claims

WATERMAN STEAMSHIP
CORPORATION

By: W. B. GARNER
Title: Executive Vice-President

(SEAL)
ATTEST:-

J. A. TOWNSEND
Secretary

Approved as to form:

GLADYS W. RINGER
Chief, Claims and Renegotiation Branch
Office of the General Counsel

[fol. 99] I, J. A. Townsend, certify that I am the duly chosen, qualified, and acting Secretary of Waterman Steamship Corporation, a party to this Agreement, and, as such, I am the custodian of its official records and the minute books of its governing body; that W. B. Garner, who signed this Agreement on behalf of said corporation, was then the duly qualified Executive Vice-President of said corporation; that said officer affixed his manual signature to said Agreement in his official capacity as said officer for and on behalf of said corporation by authority and direction of its governing body duly made and taken; that said Agreement is within the scope of the corporate and lawful powers of this corporation

J. A. TOWNSEND
Secretary

(CORPORATE SEAL)

WATERMAN STEAMSHIP CORPORATION
ADJUSTMENT FOR PRIOR SALES TO CITIZENS UNDER SECTION 9 OF THE MERCHANT SHIP SALES ACT OF 1946

LINE NO.	CREDITS TO APPLICANT	AFONTERIA	ARMEN	ATALEA	BIENVILLE	CITY OF ALMA	FAIRBIE
1	Original Purchase Prices (Exh.C) Less: Orig. Trade-in Allowances Less: Bal. of Orig. Megas up to 3-8-46	\$ 2,698 763.77 686,900.00 1,810,098.00	2,691,194.97 -0- 1,999,235.54	3,001,657.44 -0- 1,379,869.62	3,000,000.00 -0- 1,416,280.00	2,666,493.54 -0- 1,887,232.33	3,023,805.86 -0- 2,677,681.84
2	Total Cash Payments as of 3-8-46	201,765.77	731,959.43	1,622,397.82	1,943,720.00	739,250.01	2,106,104.04
3	Less: 25% of Adj. Stat.Sales Prices (Exh.D)	241,942.00	291,345.00	344,567.00	241,942.00	253,080.17	245,952.00
4	3 Credit for Known Cash Payments	(40,176.23)	450,614.43	1,377,820.82	1,341,773.00	426,237.04	1,990,252.04
5	Add: Interest Credit (Exh.C)	142,573.39	59,134.19	271,734.08	277,506.46	55,131.48	378,432.41
6	Charter Hire Which Would Have Been Paid on Vessels Traded in (Exh.F)	372,717.86	-0-	-0-	-0-	-0-	-0-
7	TOTAL CREDITS TO APPLICANT	475,115.02	239,748.62	1,649,554.90	1,619,304.46	241,369.32	2,328,608.45
8	CREDITS TO MARITIME ADMINISTRATION						
9	Charter Hire Paid by U.S. Gov't (Exh. A)	940,027.00	386,748.92	1,206,737.23	1,846,412.13	334,969.89	1,598,089.77
10	Deduct: Overpayment of Federal Taxes	578,304.32	180,161.79			150,634.36	
11	Add: Deficiency of Federal Taxes			473,464.02	508,553.46		697,192.72
12	NET CREDITS TO GOVERNMENT	361,722.68	206,586.73	1,680,201.25	1,770,965.59	181,335.53	2,893,849.56
13	NET CREDITS TO APPLICANT	113,392.34	333,161.89	(30,046.35)	(151,661.13)	360,033.79	35,434.89
14	Less: Amount of 112(r) Funds Applied to Megas. (Line 17)	-0-	447,819.46	-0-	-0-	446,144.30	-0-
15	Resulting Cash Deficiency Payable to Maritime	113,392.34	(114,657.57)	(30,046.35)	(151,661.13)	(86,110.51)	35,434.89

EXHIBIT 1
Sheet 2 of 6

WATERMAN STEAMSHIP CORPORATION

ADJUSTMENT FOR PRIOR SALES TO CITIZENS UNDER SECTION 9 OF THE MERCHANT SHIP SALES ACT OF 1946

LINE NO.	MORTGAGE ADJUSTMENT	APOLIMERIA	ANDREA JACKSON	AZALEA CITY	BUENAVILLE	CITY OF ALMA	PAYMENTS
13	Adj. Stat. Sales Prices (Exh. D)	\$ 967,768.00	1,005,380.00	978,268.00	967,768.00	1,612,080.68	983,728.00
14	Less: 25% Thereof Treated as Paid in Cash as of 3-8-46						
15	Less: Red.J. Trade-in Allowance (Exh. E)	241,942.00	251,345.00	244,567.00	241,942.00	253,080.17	245,532.00
16	Adjusted Mortgages as of 3-8-46	725,826.00	-0-	-0-	-0-	-0-	-0-
17	Less: Balance of 112(f) Funds (Exh. E)	646,590.00	754,035.00	733,701.00	725,826.00	759,060.51	737,796.00
18	Mortgage Balance as of 3-8-46 ^{as of 3-8-46}	-0-	447,819.46	-0-	-0-	446,144.30	-0-
19	Balance of Original Balance as of 3-8-46	646,590.00	306,215.54	733,701.00	725,826.00	312,916.21	737,796.00
20	Reduction in Mortgage Indebtedness	1,810,098.00	1,979,235.24	1,379,269.62	1,416,260.00	1,667,235.53	667,691.48
21	Macarandum: Excess Charter Hire on and after 3-8-46 to be Refunded by Owner	1,163,508.00	1,633,020.60	645,269.62	690,494.00	2,276,319.32	69,629.48
		\$ 12,990.66	35,220.69	(879.20)	24,083.22	35,750.25	8,031.32

[fol. 103]

EXHIBIT B
Sheet 4 of 6

WATSON STEAMSHIP CORPORATION
ADJUSTMENT FOR PRICE SALES TO CITIZENS UNDER SECTION 9 OF THE MERCHANT SHIP SALES ACT OF 1946

LINE NO.	MEMORANDUM	PAYLAND	FALMOUTH	EASTINGS	JEAN LAVETTE	JOHN B. WATSON	YEMA
13	Adjusted Net. Sales Prices (Exh. D)	\$ 983,728.00	1,075,672.19	985,277.99	967,768.00	1,077,000.00	1,047,147.19
14	Less: 2% Thereof Treated as Paid in Cash as of 3-8-46	245,932.00	268,918.05	246,319.50	241,942.00	269,250.00	261,765.80
15	Less: Readjusted Trade-in Allowance (Exh. E)	-0-	-0-	-0-	22,025.00	-0-	-0-
16	Adjusted Mortgage as of 3-8-46	737,796.00	806,754.14	738,958.49	673,801.00	807,750.00	785,380.39
17	Less: Balance of 112(c) Funds (Exh. E)	-0-	-0-	422,844.96	-0-	-0-	376,205.20
18	Mortgage Balance as of 3-8-46	737,796.00	806,754.14	286,113.53	673,801.00	807,750.00	409,175.19
19	Balance of Original Mortgage as of 3-8-46	942,618.36	2,143,800.00	1,912,535.24	1,919,280.00	2,439,200.00	1,809,148.21
20	Reduction in Mortgage Indebtedness	204,822.36	1,337,045.86	1,626,422.01	1,245,479.00	1,631,450.00	1,397,972.32
21	Memorandum: Excess Charter Hire on and after 3-8-46 to be Refunded by Owner	7,342.47	-0-	17,791.40	8,598.18	-0-	8,120.13

WATERMAN STEAMSHIP CORPORATION

ADJUSTMENT FOR PRICE SALES TO CITIZENS UNDER SECTION 9 OF THE MERCHANT SHIP SALES ACT OF 1946

LINE NO.	DEBITS TO APPLICANT	BALANCE	WALDEN CHECK	RAFAEL SERVICES	WACOSTA	WARRICK	YAMA	TOTAL
1	Original Purchase Prices (Encl. C) \$2,641,046.21 Less: Orig. Trade-in Allowances Less: Bal. of 1946. Mages up to 3-8-46	2,419,159.53 -0- 1,908,832.54	2,419,159.53 -0- 1,779,057.53	3,045,958.66 -0- 938,275.86	2,660,169.32 686,700.00 1,773,530.00	2,991,127.82 560,000.00 2,007,114.00	2,615,102.31 -0- 1,885,232.54	49,592,767.02 2,669,600.00 30,737,789.81
2	Total Cash Payments as of 3-8-46 Less: 40% of Adl. Stat. Sales Prices (Encl. D)	732,210.67 246,832.25	640,091.00 263,864.76	2,106,982.80 245,932.00	190,039.32 241,942.00	423,713.82 241,942.00	728,566.77 244,082.94	16,335,446.21 4,499,492.47
3	Credit for Excess Cash Payments	423,378.42	376,226.24	1,861,050.80	(43,902.68)	181,771.82	484,440.83	11,729,950.74
4	Add: Interest Credit (Encl. C)	95,806.80	3,805.47	345,815.24	105,245.27	214,161.71	103,159.62	2,686,866.15
5	Add: Charter Hire Which Would Have Been Paid on Vessels Traded in (Encl. F)	-0-	-0-	-0-	368,567.15	322,103.23	-0-	1,495,189.58
6	TOTAL CREDITS TO APPLICANT	579,195.22	380,031.71	2,206,866.04	489,899.74	719,036.76	587,676.45	20,917,337.47
7	CREDITS TO MARITIME ADMINISTRATION							
7	Charter hire paid by U.S. Gov't (Encl. F)	440,613.36	67,713.42	1,465,494.56	765,806.27	1,173,964.13	572,335.15	13,430,430.94
8	Deduct: Overpayment of Fed. Taxe	213,894.88	14,940.40		382,701.46	771,639.96	890,872.98	3,921,123.76
	Add: Deficiency of Federal Taxe			671,245.28				1,092,980.12
9	NET CREDITS TO GOVERNMENT	226,718.48	52,773.02	2,157,439.84	383,104.81	402,324.17	281,462.17	13,000,287.26
10	NET CREDITS TO APPLICANT	352,426.74	327,258.69	49,426.20	46,804.93	315,712.59	305,214.28	8,917,112.19
11	Less: Amount of 112(f) Funds Applied to Mages (line 17)	450,332.21	374,426.24	-0-	-0-	-0-	455,070.52	1,305,119.89
12	Resulting Cash Deficiency Payable to Maritime	(197,905.47)	(47,167.55)	49,426.20	46,804.93	315,712.59	(149,864.24)	(66,037.70)

[fol. 105]

EXHIBIT B
Sheet 6 of 6

NATIONAL STEAMSHIP CORPORATION

ADJUSTMENT FOR PRIOR SALES TO CITIZENS UNDER SECTION 9 OF THE MERCHANT SHIP SALES ACT OF 1946

LIN NO.	REPLACES ADJUSTMENT	DEBIT	MAJOR CREDIT	PAID IN CASH	WALCOTTA	WALCOTTA	TOTAL
13	Adjusted Stat. Sales Prices (Exh. B)	\$ 995,366.99	1,079,459.05	963,768.00	967,768.00	976,943.75	17,997,981.46
14	Less: 25% Dividend Treated as Paid in Cash as of 3-8-46	248,832.25	263,864.76	245,932.00	241,942.00	244,085.94	4,499,495.47
15	Less: Readjusted Trade-in Allowances (Exh. B)	-0-	-0-	-0-	104,976.44	-0-	319,977.44
16	Adjusted Mortgage as of 3-8-46	746,496.74	791,594.29	737,796.00	680,849.56	734,277.81	13,185,983.33
17	Less: Balance of 112(1) Funds (Exh. B)	450,332.21	374,426.24	-0-	-0-	579,078.22	3,039,132.89
18	Mortgage Balance as of 3-8-46	296,164.53	417,168.05	737,796.00	680,849.56	277,179.59	10,386,779.46
19	Balance of Original Mortgage as of 3-8-46	1,808,835.24	1,779,067.53	938,272.86	1,173,430.00	1,665,232.24	30,731,780.81
20	Reduction in Mortgage Indebtedness	1,612,671.01	1,351,999.43	800,479.86	1,134,580.44	1,357,908.00	1,609,396.23
21	Macropium: Excess Charter Hire on and after 3-8-46 to be Refunded by Owner	\$ 12,251.63	\$2,057.67	57,256.71	86,839.02	29,932.97	12,377.40
							359,377.32

EXHIBIT C
Sheet 1 of 1

INTEREST TO APPLICANT FOR AN AMOUNT EQUAL TO INTEREST AT $3\frac{1}{2}$ PER CENTUM PER ANNUM FROM DATE OF DELIVERY TO MARCH 8, 1946, PURSUANT TO SECTION 9(b)(5)

LINE	FOUNDERIA	MURCH JACSON	2. LIE. CITY	BLENVILLE	CITY OF ALB.	P. BIBLE
1	Original Purchase Price	2,698,763.77	2,693,194.97	3,001,657.54	2,426,493.54	3,023,805.26
2	Less: Original Trade-in Allowance	286,800.00	0	0	0	0
3	Original Purchase Price Less Original Trade-in Allowance	2,411,963.77	2,693,194.97	3,001,657.54	2,426,493.54	3,023,805.26
4	Date of Delivery	11-11-43	3-23-46	7-2-43	5-31-43	5-4-45
5	Number of Days from D. to of Delivery to March 8, 1946	647	350	979	1011	1335
6	Daily Rate of Interest at 3 1/2% per annum on the Original Purchase Price Less Original Trade-in Allowance	192.91845	263.08930	287.83017	287.67134	289.90863
7	Amount of Interest Credited to Owner	143,401.91	90,320.93	281,785.74	290,335.61	321,399.40
8	Less Interest on the Original Mortgage Indebtedness accrued up to March 8, 1946 and Unpaid	20,828.52	31,136.74	10,051.65	13,309.15	22,440.01
9	Net Interest Credit to Owner	122,573.39	59,184.19	271,734.09	277,026.46	298,959.39

[fol. 107]

NATIONAL STEELSHIP CORPORATION

EXHIBIT C
Sheet 2 of 3CREDIT TO APPLICANT FOR AMOUNT EQUAL TO INTEREST AT 3% PER CENTUM PER ANNUM
FROM DATE OF DELIVERY TO MARCH 8, 1946, PURSUANT TO SECTION 9(b)(5)

LINE	PAID-AD	PAID-POST	EASTINGS	J.E. LAFFITE	JUNE 3, 1946	ETC.
1	Original Purchase Price	53,036,211.74	2,642,706.08	32,808,824.60	2,788,334.61	2,442,789.51
2	Loss: Original Trade-in Allowance	- 0 -	- 0 -	676,000.00	- 0 -	- 0 -
3	Original Purchase Price: Loss Original Trade-in Allowance	5,036,211.74	2,450,070.78	2,132,924.50	2,788,334.61	2,442,789.51
4	Date of Delivery	8-31-42	2-27-46	11-17-46	1-11-47	11-9-46
5	Number of Days from Date of Delivery to March 8, 1946	1284	9	476	- 0 -	118
6	Daily Rate of Interest at 3% per Annum on the Original Purchase Price Less Original Trade-in Allowance	291.14360	234.93830	253.41017	- 0 -	224.23830
7	Amount of Interest Credited to Owner	375,828.57	2,114.44	120,623.24	- 0 -	27,874.00
8	Less Interest on the Original Mortgage Indebtedness accrued up to March 8, 1946 and Unpaid	723.10	1,650.13	20,369.91	- 0 -	80,800.98
9	Net Interest Credit to Owner	575,405.27	264.31	100,253.33	- 0 -	27,283.61

WATERMAN STEELSHIP CORPORATIONEXHIBIT C
Sheet 2 of 2CREDIT TO APPLICANT FOR AMOUNT EQUAL TO INTEREST AT 3% PER CENTUM PER ANNUM
FROM DATE OF DELIVERY TO MARCH 8, 1946, PULSANT TO SECTION 9(b)(5)

	WILDEET	MADEN CREEK	R. PAUL SENARS	W. COSTA	VALERION	Y. EL	TOT. L ALL VESSELS
1 Original Purchase Price	32,641,046.21	32,419,158.53	33,045,256.66	32,660,169.32	32,991,127.82	32,619,102.38	349,562,767.02
2 Less: Original Trade-in Allowance	- 0 -	- 0 -	- 0 -	686,700.00	560,000.00	- 0 -	2,406,400.00
3 Original Purchase Price Less Orig. Trade-in Allowance	32,641,046.21	32,419,158.53	33,045,256.66	31,973,469.32	32,431,127.82	32,619,102.38	447,979,167.02
4 Date of Delivery	1-9-45	1-5-46	10-30-42	4-6-44	7-26-43	9-22-44	
5 Number of Days from Delivery up to March 8, 1946	413	62	1224	3201	965	932	
6 Daily Rate of Interest at 3% For amount of the Original Pur- chase Price Less Original Trade-in Allowance	253.25101	331.97410	292.01111	189.23679	235.12185	330.76324	
7 Amount of Interest Credited to Owner	104,592.67	14,382.59	307,421.58	132,654.99	227,431.35	133,406.03	2,960,449.19
8 Less Interest on the Original Mortgage Indebtedness accrued up to March 8, 1946 and Unpaid	8,725.87	10,576.82	11,606.34	27,409.72	9,469.64	30,210.41	874,397.04
9 Net Interest Credit to Owner	95,866.80	3,805.77	295,815.24	105,245.27	217,961.71	103,195.62	2,086,052.15

WATERMAN STEAMSHIP CORPORATION

EXHIBIT B

RE-ADJUSTED TRADE-IN ALLOWANCE PURSUANT TO SECTION 9(b)(7) OF THE ACT

LINE	Traded-in Vessels	ARIZPA	KOFRESI	LAFAYETTE	WEST KENIA	TOTALS
1						
2	Type	Dry Cargo	Dry Cargo	Dry Cargo	Dry Cargo	
3	Official Number	219800	219408	219332	217224	
4	Year Built	1920	1920	1919	1918	
5	Deadweight Tons (DWT)	8,804	8,000	11,194	8,480	
6	Date Traded-in	8-24-43	9-25-43	8-24-43	8-26-43	
7	Original Trade-in Allowances	\$886,900.00	\$886,700.00	\$876,000.00	\$860,000.00	\$3,509,600.00
8	Readjusted Trade-in Allowances	\$79,236.00	\$104,976.44	\$52,025.00	\$376,320.00	\$312,557.44
	Allocation of Trade-in Allowances					
9	New Vessels	AFONDERIA	ELCOSTA	JEAN LAFITTE	ULSIEGE	
10	Allocation of Original Trade-in Allowances to each New Vessel (Exhibit C)	\$886,500.00	\$886,700.00	\$876,000.00	\$860,000.00	\$3,509,600.00
11	Ratio of Original Allowances	100%	100%	100%	100%	
12	Amount of Readjusted Trade-in Allowances Applied to each New Vessel on same Basis as Original Allowances (Exhibit B)	\$79,236.00	\$104,976.44	\$52,025.00	\$376,320.00	\$312,557.44

* Statutory Ceiling applies

[fol. 110]

WATERLUN STEAMSHIP CORPORATION

EXHIBIT H

Payments Heretofore Made to Former United States
Maritime Commission on Cost of Seven War-built
Vessels under Section 112(f) of Internal Revenue
Code

<u>Names of Vessels</u>	(1)	(2)	(3)
	Amount of Pay- ments by Appli- cant on Account of Cost of Vessels under Section 112(f) of Internal Revenue Code Relating to in- voluntary Conversions	Amount Represent. 25% of Adjusted Statutory Sales Prices	Amount by which Payments under Section 112(f) of Internal Revenue Code Exceed 25% of Adjusted Stat. Sales Prices
ANDREW JACKSON	\$ 699,164.46	\$ 251,345.00	\$ 447,819.46
CITY OF ALMA	699,164.47	253,020.17	446,144.30
HASTINGS	699,164.46	246,319.50	452,844.96
KYSKA	638,291.00	261,786.80	376,504.20
MADAXET	\$ 699,164.46	248,832.25	450,332.21
MAIDEN CREEK	638,291.00	263,864.76	374,426.24
YAKA	<u>699,164.46</u>	<u>244,085.94</u>	<u>455,078.52</u>
	<u>\$4,772,404.31</u>	<u>\$1,769,254.42</u>	<u>\$3,003,149.89</u>

U.S. DEPARTMENT OF COMMERCE
Maritime Administration
Washington 25, D.C.

June 11, 1954

Waterman Steamship Corporation
19 Rector Street
New York 6, New York

Attention: Mr. J. C. O'Brien

Gentlemen:

Subject: Contract No. MCo-42281—Adjustments

In accordance with the request of your Mr. O'Brien at the meeting recently held in this office, the following constitutes the reasoning of this office in the determination that a deficiency existed as of March 8, 1946 because of the application of 112-F funds.

Section 9, Merchant Ship Sales Act of 1946, as amended, which provides for the adjustment of prior sales of vessels to citizens, sets up a system of credits to the applicant (the prior purchaser) and credits by such applicant to the Commission. I am sure you will agree a listing of the vessels credits contained in Section 9(b) of the Act is unnecessary at this point.

Section 9(b) (8) provides—"If, . . . the sum of the credits in favor of the applicant exceeds the sum of the credits [fol. 112] in favor of the Commission, such excess shall be paid by the Commission to the applicant. If, after making such subtractions, the sum of the credits in favor of the Commission exceeds the sum of the credits in favor of the applicant, such excess shall be paid by the applicant to the Commission." P. L. 269, 80th Congress, that if any party was indebted to the Government in connection with the sale, purchase or requisition of a vessel, such amount should be deducted from any amount payable by the Government to such party.

In determining the adjustment of the price of the vessels sold to Waterman Steamship Corporation, after crediting Waterman with the excess of cash payments made upon the original purchase price of the vessels over twenty-five percent of the statutory sale price, and crediting Waterman with other sums due them, it was determined that the sum of the credits in favor of Waterman Steamship Corporation equalled \$15,917,337.47. It was likewise determined that the sum of the credits due the Government was equal to \$13,000,225.28. This left a balance due Waterman of \$2,917,112.19.

Since, however, certain moneys, in the amount of \$4,772,404.31, which had previously been deposited in a fund set up by Waterman Steamship Corporation pursuant to 112-F of the Internal Revenue Code, had been in the acquisition of the ships, Waterman stated that they would pay the United States a sum sufficient to assure that these 112-F funds remain as a part of the moneys used in the acquisition of the vessels. Thus, when these funds were reduced by the amount required as down payment (25% of statutory sales price) on the ships involved, \$1,769,254.42, a balance of unapplied 112-F funds in the amount of \$3,003,149.89 remained.

[fol. 113]

—2—

June 11, 1954

Waterman Steamship Corporation

Since the Act specifically requires that the adjustment be made by a series of credits and counter-credits with the balance being either paid or credited to the Waterman, or paid to the Commission, if the 112-F funds were to remain in the vessel, it was necessary that Waterman pay the United States the sum of \$86,037.70, or the difference between the net credits of \$2,917,112.19 and the 112-F funds applied in the amount of \$3,003,149.89. The Government made the adjustment (reduction) in the amount of mortgages due on these vessels as of March 8, 1946. Since Waterman would be required to pay the United States \$86,037.70 in order that a reduction of this amount could be made in said mortgages, Waterman must, of necessity, make such cash payment as of the same date. The amount of \$86,037.70 does not arise

by reason of a credit due the Government under Section 9, Merchant Marine Act of 1936, as amended, but arises solely by reason of the Government agreeing to Waterman's request that the total amount of 112-F funds remain as a part of the purchase price of the vessels, the price of which was being adjusted.

In order that this be done, the Government would have to have in hand as of the date at which the amount of 112-F funds was credited against the mortgage, the amount due from Waterman, which made the application of the 112-F funds to the mortgage possible.

Accordingly, it would be appreciated if Mr. O'Brien is in a position to ratify the accounting adjustments and accept the necessary billings for interest on his next visit.

Very truly yours,

G. B. PROWSE

for F. E. Hickey, Chief
Division of Claims

[fol. 118] PLAINTIFF'S EXHIBIT G—PART I

2-28-61 R.G.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA,
SOUTHERN DIVISION

Civil Action No. 2284

WATERMAN STEAMSHIP CORPORATION, Plaintiff,

vs.

UNITED STATES OF AMERICA, Defendant.

STIPULATION OF FACTS—COUNTERCLAIMS

The parties hereby stipulate and agree as follows: that the Exhibits attached hereto are incorporated herein and made a part hereof and that such Exhibits are true and correct copies of the originals thereof; and that the facts

set forth herein and the Exhibits attached hereto may be treated as evidence in this cause, without prejudice however to the right of either party to introduce other and further proof not inconsistent with the facts herein stipulated and subject to the right of either party to object to the relevancy and materiality of any of said facts and Exhibits.

24. Attached hereto as Exhibit 24 is a copy of Contract No. MCc-40639, dated November 2, 1945, between the United States Maritime Commission and Plaintiff for the purchase of the Fairport.

25. Attached hereto as Exhibit 25 is a copy of the Preferred Mortgage dated February 27, 1946, given by Plaintiff to the United States of America on the Fairport, with attached Certificate of Registry of such vessel.

[fol. 119] 26. Attached hereto as Exhibit 26 is a copy of the Estimated Cost and Valuation Statement dated June 27, 1946, concerning the Fairport. Such Statement was prepared by the United States Maritime Commission and furnished to Plaintiff by said Commission.

27. Attached hereto as Exhibit 27 is a copy of a letter dated February 21, 1946, from Mr. Wade H. Skinner, General Counsel, United States Maritime Commission, to Mr. Edouard F. Henriques, Regional Attorney, Gulf Coast, United States Maritime Commission, concerning the sale of the Fairport to Plaintiff.

28. Attached hereto as Exhibit 28 is a copy of Contract MCc-31165, dated August 14, 1944, between the United States Maritime Commission and Plaintiff for the purchase of the Hastings.

29. Attached hereto as Exhibit 29 is a copy of the Preferred Mortgage dated November 17, 1944, given by Plaintiff to the United States of America on the Hastings, with attached Certificate of Registry of such vessel.

30. Attached hereto as Exhibit 30 is a copy of a letter dated November 9, 1944, from Mr. Francis B. Goertner,

Assistant General Counsel, United States Maritime Commission, to Mr. Edouard F. Henriques, Regional Attorney, Gulf Coast, United States Maritime Commission, concerning the sale of the Hastings to Plaintiff.

59. Attached hereto as Exhibit 59 is copy of Contract No. WSA-8884, Requisition Bareboat Charter of the Hastings, [fol. 120] ings, dated November 17, 1944, between Plaintiff and the War Shipping Administration.

JOHN W. McCONNELL, JR.
Attorney for Plaintiff

RALPH KENNAMER
Attorney for Defendant

STIPULATION G — EXHIBIT 24

COUNTERPART II

Contract No. MCo-40639

CONTRACT

between

UNITED STATES MARITIME COMMISSION
and

WATERMAN STEAMSHIP CORPORATION
FOR THE PURCHASE OF THE VESSEL
DESIGNATED CONTRACTOR'S HULL NO. 36
COMMISSION'S HULL NO. 1614

THIS AGREEMENT made as of the 2d day of November, 1945, between UNITED STATES MARITIME COMMISSION (herein called the "Commission") and WATERMAN STEAMSHIP CORPORATION, a corporation organized and existing under the laws of the State of Alabama (herein called the "Buyer"),

WHEREAS:

1. The Commission and Gulf Shipbuilding Corporation, an Alabama corporation (herein called the "Contractor"), [fol. 121] entered into a contract dated January 21, 1943 (herein called the "Construction Contract"), a copy of which contract is attached hereto and marked "Exhibit A", for the construction and delivery of a vessel designated Contractor's Hull No. 36 and Commission's Hull No. 1614 (now named FAIRPORT and herein called the "Vessel") in accordance with the plans and specifications referred to therein for the consideration therein set forth; and

2. Pursuant to the provisions of the Merchant Marine Act 1936, as amended, the Commission has agreed to sell the Vessel to the Buyer under the terms and conditions hereinafter set forth and has made all necessary findings in connection therewith required under the provisions of said Merchant Marine Act 1936, as amended.

NOW, THEREFORE, in consideration of the premises and mutual promises hereinafter set forth, the parties hereto agree as follows:

ARTICLE 1. *Agreement to Purchase.* Subject to the provisions hereinafter set forth, the Buyer agrees to purchase from the Commission and the Commission agrees to sell to the Buyer the vessel (named FAIRPORT and designated Contractor's Hull No. 36 and Commission's Hull No. 1614) if and when constructed by the Contractor and delivered to and accepted by the Commission in accordance with the terms of the Construction Contract (as amended from time to time), fully outfitted and equipped as provided in the Construction Contract.

ARTICLE 2. *Acceptance of the Vessel by the Buyer—Bill of Sale.* The Commission agrees to deliver and the Buyer agrees to accept delivery of the Vessel concurrently [fol. 122] with the acceptance of said Vessel by the Commission from the Contractor and its documentation under the laws of the United States. At the time of delivery of the Vessel by the Commission to the Buyer, the Commission shall execute and deliver to the Buyer a Bill of Sale, in

the usual Government form, conveying the Vessel to the Buyer with warranties of title and freedom from liens.

ARTICLE 3. *Purchase Price of Vessel.* The Buyer agrees to pay at the time and in the manner hereinafter set forth as purchase price of the Vessel the full cost to the Commission of the Vessel, including outfitting and equipping the Vessel, exclusive of the cost of national defense features, upon completion and delivery in accordance with said Construction Contract dated January 21, 1943, plus interest at the rate of 3-1/2 per centum per annum on payments made by the Commission on account of the cost of the construction of, or outfitting or equipping, the Vessel from date of such payments to date of delivery of the vessel or until date the Commission receives reimbursement therefor from the Buyer (to the extent of such reimbursement); Provided, That the purchase price shall not be increased on account of any changes in the plans and specifications of the Vessel heretofore or hereafter authorized by the Commission for the purpose of incorporating features in the Vessel which the Commission determines to be "national defense features."

It is understood and agreed between the parties hereto that the cost of any national defense features incorporated in the Vessel shall be borne by the Commission.

ARTICLE 4. *Payment of Purchase Price of Vessel.* The purchase price of the vessel, including interest as provided [fol. 123] in Article 3 hereof, shall be paid by the Buyer upon delivery of the Vessel by the Commission to the Buyer, as follows:

(a) The Buyer shall, simultaneously with the execution and delivery of this contract by the Commission to the Buyer, pay to the Commission in cash the sum of \$306,270.78 as part of the purchase price.

(b) In the event the amount to be paid in cash, including interest, by the Buyer as set forth in paragraph (a) of this Article 4 does not equal 12-1/2 per cent of the purchase price of the Vessel, as tentatively determined hereunder, then and in that event the Buyer shall pay to the Commis-

sion in cash, upon delivery of the Vessel and simultaneously with delivery of the promissory notes referred to in paragraph (c) of this Article 4, such an amount as may be necessary when added to said sum of \$306,270.78 to equal 12-1/2 per cent of the purchase price of the Vessel, plus interest as hereinbefore described.

(c) Upon delivery of the Vessel from the Commission to the Buyer, the Buyer shall give to the Commission its twenty negotiable promissory notes and a First Preferred Mortgage on the Vessel, securing said notes, in substantially the latest standard form of the Commission. Said notes shall be of equal principal amounts, shall mature one each year during the twenty years succeeding the date of delivery of the Vessel, and shall bear interest at the rate of 3-1/2 per centum per annum, payable semi-annually.

The aggregate principal amount of the notes given upon the date of delivery of the Vessel shall be equal to the unpaid balance of the purchase price required to be paid under the provisions of Article 3 hereof.

[fol. 124] In the event the actual cost of the Vessel as finally determined by the Commission, subsequent to the date of delivery of the Vessel is less than the total amount of the payments made by the Buyer under the provisions of paragraphs (a) and (b) of this Article 4 and the amount secured by the First Preferred Mortgage to be given with respect to the Vessel, there shall be an appropriate adjustment of the principal amount of the notes given by the Buyer to evidence the deferred payments of the purchase price of the Vessel, such adjustment to be made as of the date of delivery of the Vessel. In the event the actual cost of the Vessel as finally determined by the Commission under the provisions of Article 3 hereof is more than the total amount of the payments made by the Buyer under the provisions of paragraphs (a) and (b) of this Article 4 and the amount secured by the First Preferred Mortgage to be given with respect to the Vessel, the Buyer shall pay to the Commission in cash the amount of such deficiency with interest at 3-1/2 per cent per annum from date of delivery of said Vessel.

The determination by the Commission of the purchase price of the Vessel shall be final and conclusive on the parties hereto.

Said payments, both as to cost price and interest, shall be tentatively computed and paid upon the delivery of the Vessel as hereinabove provided, subject to revision and adjustment between the parties as soon as the final amount can be determined in accordance with the foregoing provisions.

ARTICLE 5. *Insurance—Insurance Companies.*

(a) The Buyer shall secure and maintain the insurance required under the provisions of the First Preferred Mortgage to be given hereunder; provided, however, that the [fol. 125] Buyer shall not be required to secure or maintain any insurance on the New Vessel other than total loss only, in the amount of not less than One Hundred Ten per centum (110%) of the principal amount of the promissory notes secured by the mortgage given on the New Vessel, with loss, if any, payable to the Commission for distribution to the United States or the Buyer as interest may appear, in the event that the Buyer shall deposit with the Commission, under a form of agreement satisfactory to the Commission, United States Government Bonds and/or other obligations, acceptable to the Commission, in principal amount not less than One Hundred Ten per centum (110%) of the principal amount of the promissory notes secured by said mortgage, said bonds and/or other obligations to constitute additional security for the due and punctual payment of said promissory notes. It is understood that the Buyer may secure and maintain any other insurance as it may determine in its own discretion and may be named as sole beneficiary in any policies so secured and maintained.

Upon payment by the Buyer of all principal and all interest due on any one or more of said promissory notes, a proper part, so nearly as may be practicable, of the bonds and/or other obligations deposited with the Commission as above provided, shall be released by the Commission and duly delivered to the Buyer.

(b) The policies of insurance required hereunder and the underwriters or underwriting funds issuing the same shall be subject to the approval of the Commission, and the Buyer agrees to keep fully paid the premiums and other charges on such insurance.

(c) The Buyer agrees that it will not do any act, nor voluntarily suffer nor permit any act to be done, whereby [fol. 126] any insurance shall or may be suspended, impaired, or defeated and will not suffer nor permit the New Vessel to engage in any voyage, nor to carry any cargo not permitted under the policies of insurance in effect, without first covering the New Vessel, to the amount herein provided for, with insurance satisfactory to the Commission for such voyage or the carriage of such cargo.

ARTICLE 6. *Changes in Plans and Specifications.* The Commission agrees that it will not, subsequent to the execution of this Agreement, authorize any changes in the plans and specifications of the Vessel (other than those involving National Defense Features) without the prior consent of the Buyer. All changes in plans and specifications (other than those involving National Defense Features) made subsequent to the execution of this Agreement shall inure to the benefit of or will be for the account of the Buyer, that is, the total amount of the increases in contract price on account of such changes shall be added to the purchase price and the total amount of decreases in contract price on account of such changes shall be deducted from the purchase price.

ARTICLE 7. *Rights upon Default by the Contractor—Loss of Vessel before Completion.* If the Contractor defaults in the construction of the Vessel, the Buyer shall have no rights against the Commission for damages which it may sustain on account of failure to deliver the Vessel or delay in the delivery. Upon the taking by the Commission (in its discretion) of the action provided in the event of default under the Construction Contract, the rights of the Buyer shall be as follows:

(a) *In the Event of Completion by the Commission:* If the Commission, acting directly or through a contractor,

proceeds with the work to the completion of the Vessel, [fol. 127] the Buyer shall purchase the Vessel on completion and shall pay therefor the purchase price determined as provided in Article 3 hereof; Provided, That there shall be no deductions from the purchase price on account of delay in completion and delivery of the Vessel, in excess of the amounts actually recovered on account of such delay by the Commission. In the event of such completion by the Commission, adjustments shall be made for deficiencies and failure to meet the guaranties in the same amounts as if the Vessel had been completed under the Construction Contract by the Contractor. Legal fees and other expenses incurred in taking possession of the Vessel and any property of the Contractor, or in the taking of any other extraordinary action made necessary by the Contractor's default and not related to construction, shall not be included in determining the purchase price of the Vessel.

(b) *If the Commission does not Complete the Vessel:* If the Commission determines not to complete the Vessel, it shall give notice to Buyer of such determination and thereafter the Buyer shall have no rights hereunder, except to the return of its installment payments as hereinafter stated, without interest. The Commission shall pay to the Buyer from the proceeds of the sale of the Vessel, so far as available after deducting expenses of the sale, and from any amounts recovered from the Contractor and its surety (and only from such sources) an amount equal to the cash payments, including interest paid by the Buyer, theretofore made by the Buyer pursuant to Article 4 hereof. The Buyer shall have no right to any payments from the Commission for reimbursement for expenses incurred by it. If, after default by the Contractor, the Commission sells the Vessel, the Buyer may become a purchaser at such sale, in which event the payments (excluding payments of interest) previously made hereunder on account of the purchase price [fol. 128] (and not repaid) may be credited on the purchase price. It is understood that the Commission may determine, in its discretion, the time and place of sale and may impose such conditions with respect thereto as it may deem advisable, including provision for completion of the Vessel.

and for her operation in a manner reasonably calculated to carry out effectively the purposes and policy of the Act.

(c) *If Vessel is Lost before Completion by Contractor:* In the event that an actual or constructive total loss of the Vessel shall occur prior to its delivery by the Contractor to the Commission and the Construction Contract shall be cancelled, as therein provided, the Buyer shall be entitled to any amounts received by the Commission, in accordance with the provisions of the Construction Contract, from the Contractor as refund of installment payments made by the Commission or as proceeds of any insurance, in excess of the amount which is then payable to the Commission under the provisions of Article 4 hereof.

ARTICLE 8. *Documentation of Vessel.* Upon its completion the Vessel shall be documented under the laws of the United States and shall remain documented under the laws of the United States so long as any mortgage, or any of the notes secured thereby, shall be outstanding.

ARTICLE 9. *Transfer of Rights to Buyer:* The Commission agrees that the Buyer shall have all the rights conferred upon the Commission by provisions of said Construction Contract relating to the Vessel which, by the terms thereof, would be operable in favor of the Commission as Owner from and after the time of completion and delivery of said Vessel by the Contractor to the Commission if the Commission remained the Owner thereof, and [fol. 129] the Commission further agrees to execute all instruments requested by the Buyer to effectuate such transfer of rights.

ARTICLE 10. *Employment of Member of Congress.* The Buyer agrees not to employ any Member of Congress either with or without compensation, as an attorney, agent, officer, or director.

ARTICLE 11. *Officials not to Benefit nor be Employed.* No member of or Delegate to Congress, nor Resident Commissioner, shall be admitted to any share or part of this contract or to any benefit that may arise therefrom, except as provided in Section 116 of the Act approved March 4, 1909 (35 Stats. 1109).

ARTICLE 12. *Future Legislation.* The Commission agrees that in the event of the enactment of legislation authorizing the sale by the United States of vessels, constructed or sold under conditions similar to the construction and sale of the Vessel herein agreed to be sold, at a price less than the actual construction cost thereof, exclusive of the cost of national defense features installed in any such vessel, the Buyer shall be granted the benefit of such legislation with respect to the sales price of the Vessel, in which event the Commission shall make an appropriate adjustment with the Buyer, on the purchase price of the Vessel.

IN WITNESS WHEREOF, the parties hereto have executed five original counterparts of this Agreement as of the day and year first above written.

UNITED STATES MARITIME COMMISSION

By **?????**
Secretary

[fol. 130] **ATTEST:**

?????
Assistant Secretary

WATERMAN STEAMSHIP CORPORATION

By **N. NICOLSON**
President

ATTEST:

J. A. TOWNSEND
Secretary

Approved as to form:

JOHN F. HARRELL
Assistant to General Counsel
United States Maritime Commission

STIPULATION G — EXHIBIT 25

PREFERRED MORTGAGE

WATERMAN STEAMSHIP CORPORATION

To

UNITED STATES OF AMERICA

On

SS FAIRPORT

THIS MORTGAGE, dated the 27th day of February, 1946, by and between WATERMAN STEAMSHIP CORPORATION, a corporation organized and existing under the laws of the State of Alabama (herein called the "Ship-[fol. 131] owner") and UNITED STATES OF AMERICA, represented by the UNITED STATES MARITIME COMMISSION (herein called the "Mortgagee"),

WHEREAS:

1. As of the 2d day of November, 1945, the Shipowner and the Mortgagee entered into a certain contract for the purchase by the Shipowner from the Mortgagee of the SS FAIRPORT (herein called the "Vessel") hereinafter described;

2. As part of the consideration for the sale of the Vessel, the Shipowner agreed to pay to the Mortgagee the sum of Two Million Four Hundred Fifty Thousand Seventy Dollars and Seventy-eight Cents (\$2,450,070.78) payable Three Hundred Six Thousand Two Hundred Seventy Dollars and Seventy-eight Cents (\$306,270.78) in cash on or before delivery and the balance in twenty (20) equal installments, to be evidenced by twenty (20) negotiable promissory notes of the Shipowner and to be secured by a First Preferred Mortgage on the Vessel to be given by the Shipowner to the Mortgagee in the form of this Preferred Mortgage;

3. Pursuant to the terms of said purchase agreement, the Mortgagee has simultaneously herewith conveyed to the Shipowner, by proper bill of sale, the Vessel, and the Shipowner is now the sole owner of said Vessel;

4. The Shipowner is justly indebted to the Mortgagee in the sum of Two Million One Hundred Forty-three Thousand Eight Hundred Dollars (\$2,143,800.00) upon the purchase price of the Vessel; and

[fol. 132] 5. The Shipowner, for the purpose of duly securing the payment of said indebtedness and the interest thereon, has duly authorized and directed the execution and delivery of this First Preferred Mortgage and the negotiable promissory notes given herewith and herein described to the Mortgagee;

NOW, THEREFORE, THIS MORTGAGE WITNESSETH:

That in consideration of the premises and of the sum of Two Dollars (\$2.00) duly paid by the Mortgagee at or before the sealing and delivery of these presents and for other valuable considerations, receipt whereof is hereby acknowledged by the Shipowner, and in order to secure payment of said principal sum of Two Million One Hundred Forty-three Thousand Eight Hundred Dollars (\$2,143,800.00) and interest thereon at the rate of three and one-half per centum (3-1/2%) per annum, payable semiannually, as evidenced by the notes hereinafter described and according to the tenor thereof, and the performance and observance of each and every one of the covenants, stipulations, and conditions set forth herein, the Shipowner has granted, bargained, sold, conveyed, transferred, assigned, remised, released, mortgaged, set over and confirmed and by these presents does grant, bargain, sell, convey, transfer, assign, remise, release, mortgage, set over and confirm unto the Mortgagee and its assigns all of the following described property, to-wit:

The whole of that certain steel Vessel FAIRPORT, Official Number 249072, of about 6165 gross tons and 3519 net tons register, which Vessel is more fully described in her Marine document, a true copy of which is hereto attached and made a part hereof, together with her engines, boilers,

machinery, masts, bowsprit, boats, anchors, cables, rigging, tackle, apparel, furniture, and all other appurtenances [fol. 133] thereunto appertaining and belonging, and all additions, improvements and replacements hereafter made in or to the Vessel or any part or appurtenance or equipment thereof;

TO HAVE AND TO HOLD all and singular the above granted and described property unto the Mortgagee and its assigns to its and their own use, benefit and behoof forever;

PROVIDED, HOWEVER, and these presents are upon the condition that if the Shipowner, or its successors or assigns shall pay or cause to be paid to the Mortgagee or its assigns the said principal sum of Two Million One Hundred Forty-three Thousand Eight Hundred Dollars (\$2,143,800.00) and interest thereon at the rate of three and one-half per centum ($3\frac{1}{2}\%$) per annum payable semi-annually, by payment of the following described notes and interest thereon in accordance with the terms of such notes, and shall pay to the Mortgagee or assigns any and all other sums that may be owing and payable to the mortgagee or assigns hereunder, then this Mortgage and the estate and rights hereby granted shall cease, determine and be void; otherwise to remain in full force and effect.

Said notes are dated February 27, 1946, and are in the aggregate principal amount of Two Million One Hundred Forty-three Thousand Eight Hundred Dollars (\$2,143,800.00) and are numbered 1 to 20 inclusive; each note is for the principal sum of One Hundred Seven Thousand One Hundred Ninety Dollars (\$107,190.00) and the dates of [fol. 134] their maturity, respectively, are February 27, of the years set opposite their numbers hereinbelow:

<i>Number of Note</i>	<i>Year of Maturity</i>	<i>Number of Note</i>	<i>Year of Maturity</i>
1	1947	11	1957
2	1948	12	1958
3	1949	13	1959
4	1950	14	1960
5	1951	15	1961
6	1952	16	1962
7	1953	17	1963
8	1954	18	1964
9	1955	19	1965
10	1956	20	1966

Whenever hereinafter the word "notes" is used, that word shall be deemed to mean and include the above-mentioned notes, which are substantially in the following form, the blanks therein having been appropriately filled:

FORM OF NOTE

No.

On the day of , 19 , for value received, WATERMAN STEAMSHIP CORPORATION, a corporation duly organized and existing under the laws of the State of Alabama, promises to pay to the UNITED STATES OF AMERICA, or order, the principal sum of [fol. 135] (\$) and to pay interest on said principal sum from the date hereof at the rate of three and one-half per centum (3-1/2%) per annum, payable semiannually, on the day of and the day of in each year, first payment due , 19 , until the principal sum hereof is paid, both principal and interest to be payable at the office of the United States Maritime Commission, Washington, D.C., in any coin or currency of the United States of America which, at the respective dates of payment thereof, is legal tender for public and private debts.

This note is one of a series of twenty (20) notes, aggregating (\$) principal amount, of like form and tenor, save for their respective numbers and dates of maturity, each of which is issued under and secured by a First Preferred Mortgage, dated , 19 , upon the American steel vessel , Official Number , to which mortgage reference is hereby made for a description of the property thereby mortgaged, the nature and extent of said security, and the rights of the respective holders of the notes in respect of said security. In case an event of default has occurred under said Mortgage, this note may, at the option of the holder, be declared and become immediately due and payable, and the holder shall have other remedies therein or by law provided, all as more fully set forth in said mortgage.

This note may be redeemed at the option of the maker on any semiannual interest date upon at least thirty (30) days' prior written notice, by payment of the principal amount hereof, together with interest thereon to date of payment.

[fol. 136] IN WITNESS WHEREOF the undersigned has caused this note to be executed by its officers thereunto duly authorized, the day of , 19

WATERMAN STEAMSHIP CORPORATION

By: _____
President

By: _____
Treasurer

ATTEST:

Secretary

The Shipowner hereby covenants and agrees to pay said balance of the purchase price of said Vessel together with interest thereon as herein and in said notes provided and at all times to keep, perform and observe all and singular the covenants, conditions, stipulations, promises and agreements in this Mortgage and in said notes expressed or implied and on its part to be kept, performed and observed and to pay all sums that may hereafter become due hereunder.

The Shipowner prior to the maturity of the notes shall have the right at its option to redeem any or all of the notes then outstanding on any semi-annual interest date upon at least thirty (30) days' prior written notice to the Mortgagee by the payment of the principal amount thereof together with accrued interest thereon to date of payment, but no such redemption shall entitle the Shipowner to a discharge of this Mortgage until all of the covenants, conditions, stipulations and agreements shall have been kept, observed and performed. In case of redemption of less [fol. 137] than all of the notes outstanding, the notes to be redeemed shall be selected by the Shipowner.

The Shipowner for itself, its successors and assigns hereby covenants and agrees with the Mortgagee and its successors and assigns that said Vessel and all the appurtenances thereunto appertaining and belonging and all replacements hereafter made in or to the same are to be held by the Mortgagee subject to the further covenants, conditions and uses hereinafter set forth; that is to say;

ARTICLE I

THE SHIPOWNER HEREBY COVENANTS AND AGREES:

Section 1. The Shipowner was duly organized and is now existing as a corporation under the laws of the State of Alabama and is now, and shall remain during the life of this Mortgage, a citizen of the United States as defined in Section 2 of the Shipping Act, 1916, as amended, and is duly authorized to mortgage the Vessel conveyed hereby.

and that all corporate action necessary and required by law for the execution and delivery of this First Preferred Mortgage, and the good faith affidavit filed herewith, has been duly and effectively taken, and that the aforesaid notes in the hands of the holder thereof are and will be valid and enforceable obligations of the Shipowner in accordance with their terms.

Section 2. The Shipowner lawfully owns and is lawfully possessed of the Vessel free from any lien or incumbrance whatsoever, except liens in favor of the United States, and that it will warrant and defend the title and possession thereto and to every part thereof for the benefit of the Mortgagee against the claims and demands of all persons whomsoever.

[fol. 138] *Section 3.* (a) The Shipowner will, at its own expense, when and so long as this Mortgage, or any of the notes secured hereby, shall be outstanding, insure the Vessel and keep the same insured against all such risks as the Mortgagee from time to time may require, in an amount in dollars, in money of the United States which is legal tender for the payment of public and private debts, equal to the full commercial value of the Vessel, but in no event less than 110 per cent of the amount remaining unpaid on the purchase price of the Vessel from time to time.

(b) Until otherwise required or permitted by the Mortgagee, such insurance shall be as hereinafter specified, that is to say:

(i) Such insurance shall include hull or port risk insurance, and may include such amounts of disbursements and other forms of "total loss only" insurance as are permitted by the hull or port risk insurance policies. The total amount of insurance in the hull or port risk policies for the Vessel shall equal the valuation of such Vessel stated in such policies.

(ii) While being operated, the Vessel shall always be covered by hull insurance placed under the latest form of American Institute of Marine Underwriters' policy, or under such other form of policy as the Mortgagee may approve.

(iii) When and while the Vessel is laid up, in lieu of the aforesaid hull or hulls and disbursements insurance, port risk insurance may be taken out thereon by the Shipowner under forms of port risk policies approved by the Mortgagee.

(iv) The Shipowner, at its own expense, when and so long as this mortgage, or any of the notes secured [fol. 139] hereby, shall be outstanding, will also keep the said Vessel insured against protection and indemnity risks and liabilities by policies or certificates approved by the Mortgagee as to form and amount. So long as the Shipowner is not in default hereunder, the Mortgagee shall consent that payment of losses under such insurance shall be made direct to the Shipowner to reimburse it for any loss, damage, or expense suffered or incurred by it and covered by said insurance.

(c) All insurance required hereunder shall be placed with insurance companies, underwriters' associations or underwriting funds satisfactory to the Mortgagee and shall be taken out in the name of the Waterman Steamship Corporation for account of whom it may concern, all losses shall be made payable to the United States Maritime Commission, Washington, D. C., and all insurance monies received by said Commission shall be distributed by it as follows:

(i) In the event that insurance (except the insurance required under the foregoing paragraph (b) (iv) of this Section (3) becomes payable under said policies on account of accident or event not resulting in actual or constructive total loss of said Vessel, the Mortgagee shall (a) if the Shipowner is not in default under this Mortgage, consent that the Underwriters pay direct for repairs, salvage, or other charges, or (if the Shipowner shall have first fully repaired the damage or secured complete discharge of the liability insured against) reimburse the Shipowner therefor; or (b) if the Shipowner is in default under this mortgage, apply the insurance as provided in Article II hereof.

(ii) In the event of an actual or constructive total loss of the Vessel, the Mortgagee shall retain out of insurance payments received on account of said loss, [fol. 140] which shall become the sole property of the Mortgagee, any sum or sums that shall be or become owing to the Mortgagee under this mortgage, whether or not the same be then due or payable, together with accrued interest and the cost of collecting the insurance.

(d) When and so long as this Mortgage, or any of the notes secured hereby, shall be outstanding, all policies, binders and cover notes evidencing insurance as required hereunder shall be delivered to the United States Maritime Commission, Washington, D. C., for its approval and custody.

(e) In the event that any claim or lien is made against the Vessel for loss, damage, or expense which is covered by insurance required hereunder, and it is necessary for the Shipowner to obtain a bond or supply other security to prevent arrest of the Vessel, or to release the Vessel from arrest on account of said claim or lien, the Mortgagee, on request of the Shipowner, may at the sole option of the Mortgagee, assign to any person, firm, or corporation executing a surety or guarantee bond, or other agreement to save or release the mortgaged Vessel from such arrest, all right, title, and interest of the Mortgagee in and to said insurance covering said loss, damage, or expense as collateral security to indemnify against liability under said bond or other agreement.

(f) The Shipowner agrees to keep the premiums and other charges on all insurance required hereunder fully paid. The Mortgagee agrees to reimburse the Shipowner annually, by direct payment, in an amount equal to the premium for total loss insurance, as determined by the Mortgagee, on the Mortgagee's interest (determined as hereinbefore provided) if the Mortgagee requests that its interest be insured. All insurance shall be placed and kept with responsible underwriters in good standing or under [fol. 141] writing funds, satisfactory to the Mortgagee. Un-

less otherwise permitted by the Mortgagee in writing, all insurance required hereunder, shall in so far as it is, in the judgment of the Mortgagee, practicable and obtainable at reasonable rates, be placed with companies, association, or underwriting funds authorized to do any insurance business in a state of the United States, or the District of Columbia, and the remaining balance, if any, shall be placed with foreign companies or underwriters under policies containing in so far as practicable, among others, the following provisions:

"The place of physical and actual issue and delivery of this policy is the City of London, but nevertheless, as between the Assured and the Assurers the place of suit hereon shall be deemed the State of New York, United States of America, and any suit hereon may be brought against this Company in any Court in the State of New York; this policy shall, with respect to validity, construction and enforcement, be governed by and subject to the laws of the State of New York. The summons and other legal processes may be served on this Company by and in behalf of the Assured by mailing a copy thereof by United States registered mail addressed to (Note: Assurer shall name in the policy two or more persons, citizens of the United States and legal residents of the State of New York), each of whom this Company hereby authorizes to accept by and in its behalf such summons and other legal processes against this Company in any Court in the State of New York. The mailing, as herein provided, of such summons or other legal process shall be deemed personal service and accepted by this Company as such, and shall be legal and binding upon this Company for all the purposes of the suit. Final judgment against this Company in any such suit shall be conclusive; and it may be enforced in other jurisdictions, including [fol. 142] Great Britain by suit on the judgment, a certified or exemplified copy of which shall be conclusive evidence of the fact and of the amount of this indebtedness. The right of the assured to bring suit as provided herein shall be limited to a suit brought in its

own name and for its own account. For the purposes of suit as herein provided, the word 'Assured' includes any mortgagee under a ship mortgage and any person succeeding to the rights of any such mortgagee."

(g) The Shipowner agrees that it will not do any act, nor voluntarily suffer nor permit any act to be done, whereby any insurance shall or may be suspended, impaired, or defeated and will not suffer nor permit the Vessel to engage in any voyage, nor to carry any cargo not permitted under the policies of insurance in effect, without first covering the Vessel, to the amount herein provided for, with insurance satisfactory to the Mortgagee for such voyage or the carriage of such cargo.

Section 4. So long as this Mortgage, or any of the notes secured hereby, shall be outstanding, the Shipowner will not cause nor permit the Vessel to be operated in any manner contrary to law or contrary to any lawful rules or regulations which the UNITED STATES MARITIME COMMISSION may from time to time prescribe.

Section 5. Neither the Shipowner nor the Master of the Vessel has or shall have any right, power or authority to create, incur or permit to be placed or imposed upon the Vessel any liens whatsoever, other than for crew's wages or salvage.

Section 6. A properly certified copy of this Mortgage shall be carried with the ship's papers on board the Vessel, and shall be exhibited, on demand, to any person having business with the Vessel, or to any representative of the [fol. 143] Mortgagee; and a notice, reading as follows, printed in plain type of such size that the paragraph or reading matter shall cover a space not less than six inches wide by nine inches high, framed, shall be placed and kept prominently in the chart room and in the Master's cabin of the Vessel:

NOTICE OF MORTGAGE

"This Vessel is covered by a Preferred Mortgage to the UNITED STATES OF AMERICA, under authority of the 'Ship Mortgage Act, 1920,' as amended, to secure payment to the UNITED STATES OF AMERICA of the unpaid purchase price of the Vessel. Under the terms of said mortgage neither WATERMAN STEAMSHIP CORPORATION, nor the Master of the Vessel has any right, power or authority to create, incur or permit to be imposed upon the Vessel any liens whatsoever other than for crew's wages or salvage."

Section 7. If a libel shall be filed against said Vessel, or if the Vessel shall be levied upon or taken into custody, or detained by any proceeding in any court or tribunal or by any Government or other authority, the Shipowner within fifteen (15) days thereafter will cause the Vessel to be released and any lien thereon, other than this Mortgage, to be discharged. In the event a libel is filed against said Vessel, or in the event said Vessel is levied upon or taken into custody or detained by any authority whatsoever, the Shipowner agrees forthwith to notify the UNITED STATES MARITIME COMMISSION thereof by telegram, confirmed by letter, at its office in Washington, D. C.

[fol. 144] *Section 8.* The Shipowner will at all times and at its own cost and expense maintain and preserve the Vessel, so far as may be practicable, in at least as good condition, working order and repair as the Vessel is in at the date of this Mortgage, ordinary wear and tear and depreciation excepted; and will keep the Vessel in such condition as will entitle her to the highest classification and rating for vessels of the same age and type in the American Bureau of Shipping, and annually will furnish to the Mortgagee a certificate by such Bureau that such classification is maintained. The Vessel shall and the Shipowner covenants that it will, at all times comply with all applicable United States laws, treaties and conventions, and rules and regulations issued thereunder, including particularly, but without limitation by this enumeration, International Con-

vention for Safety of Life at Sea, 1929, and all laws, rules and regulations administered by the United States Coast Guard, Navy Department, the Bureau of Customs, Treasury Department, and the United States Federal Communications Commission, and shall have on board as and when required thereby valid certificates showing compliance therewith. The Shipowner will make no substantial change in the structure, type or speed of the vessel nor change in her rig, without first receiving the written approval thereof by the Commission.

Section 9. The Shipowner will at all times afford the Mortgagee or its authorized representatives full and complete access to the Vessel for the purpose of inspecting the Vessel, its cargoes and papers; and, so long as this Mortgage, or any of the notes secured hereby, shall be outstanding, the Shipowner shall permit a representative of the Mortgagee to make one round trip on one of the regular trips of the Vessel, each calendar year, for the purpose of inspecting the Vessel in full operation at sea, the time of such trip to be selected by the Mortgagee with reasonable [fol. 145] notice to the Shipowner; and the Shipowner, at its own cost, shall furnish such representative regular first class cabin accommodations and subsistence during such trip, including the time of the Vessel's stay in port or ports other than port of embarkation; and the Shipowner shall arrange that the Master of the Vessel will cooperate with such representative and render him all assistance in such inspection.

Section 10. The Shipowner will pay and discharge when due and payable from time to time, all taxes, assessments, Governmental charges, fines and penalties lawfully imposed on the Vessel.

Section 11. The Shipowner will not sell, mortgage, transfer, nor demise charter the Vessel without the written consent of the Mortgagee first had and obtained and any such written consent to any one sale, mortgage, transfer or charter shall not be construed to be a waiver of this provision in respect to any subsequent proposed sale, mortgage, transfer or charter. Any such sale, mortgage, trans-

fer or charter of the Vessel shall be subject to the provisions of this Mortgage and the lien it creates.

Section 12. The Shipowner will comply with and satisfy all the provisions of the Ship Mortgage Act, 1920, as amended, in order to establish and maintain this mortgage as a first preferred mortgage upon the Vessel and upon all renewals, improvements and replacements made in or to the same.

Section 13. So long as this Mortgage or the notes secured hereby are outstanding, the Vessel shall remain documented under the laws of the United States.

Section 14. In the event that this Mortgage, the notes, or any provisions hereof or thereof shall be deemed invalid [fol. 146] dated in whole or in part by reason of any present or future law of the United States or any decision of any authoritative court; or if the documents at any time held by the Mortgagee be deemed by the Mortgagee for any reason insufficient to carry out the true intent and spirit of this Mortgage and said notes, then, from time to time the Shipowner will execute on its own behalf, such other and further assurances and documents as in the opinion of counsel for the Mortgagee may be required more effectually to subject the Vessel to the payment of the principal sum of the mortgage debt, together with interest thereon, as in said notes and as herein provided, and the performance of the terms and provisions of the notes and this Mortgage.

ARTICLE II

Section 1. In case any one or more of the following events, herein termed "Events of Default", shall happen; that is to say, in case

(a) default shall be made in the payment of the whole or any part of the interest on any of said notes when and as the same shall become due and payable as therein and herein provided and the same shall continue for fifteen (15) days; or

(b) default shall be made in the payment of the whole or any part of the principal of any of said notes when

the same shall become due and payable, whether at maturity, by notice of redemption, or otherwise; or

(c) default shall be made in the due and punctual observance and performance of any provision of Sections 3, 4, 5, 6, 7, 12, 13 or 14 of Article I hereof; or

[fol. 147] (d) the Shipowner shall demise charter, sell, mortgage or transfer said Vessel or shall attempt to demise charter, sell, mortgage or transfer said Vessel, without the written consent of the Mortgagee; or

(e) the Vessel shall be libelled or levied upon or taken by virtue of any attachment or execution or seized by any Governmental authority, and shall not be released from such libel, levy, attachment, execution or seizure within fifteen (15) days; or.

(f) the Shipowner shall remove or attempt to remove said Vessel beyond the limits of the United States, save on voyages with the intention of returning to the United States, or shall abandon the Vessel in a foreign port; or

(g) the Shipowner shall be dissolved or adjudged a bankrupt or shall make a general assignment for the benefit of its creditors or shall lose its charter by forfeiture or otherwise, or a receiver or receivers of any kind whatsoever, whether appointed or not in Admiralty, Bankruptcy, Common Law or equity proceedings, and whether temporary or permanent, shall be appointed for the Vessel or for the property of the Shipowner; or a petition for reorganization of the Shipowner under the Bankruptcy Act shall be filed by the Shipowner, or such petition shall be filed by creditors and the same is approved by the Court; or if reorganization of the Shipowner under said Act is approved by the Court, whether proposed by a creditor, a stockholder or any other person whomssoever; or

(h) the Shipowner ceases to be a citizen of the United States as defined in Section 2 of the Shipping Act, 1916, as amended; or

[fol. 148] (i) default shall be made by the Shipowner in the prompt and faithful performance or observance of any other covenant, condition or agreement by it to be performed and observed, contained in said notes or in this Mortgage and such default shall continue for fifteen (15) days;

then and in each and every such case the Mortgagee thereupon may

(1) declare all the principal sum and the notes then outstanding, with the interest thereon, to be due and payable immediately, and upon such declaration the same with interest to date of declaration shall become and be immediately due and payable, and thereafter shall bear interest at the rate of six per centum (6%) per annum; provided, however, that if before any sale of any of the mortgaged property all defaults shall have been remedied and removed and full performance made by the Shipowner to the satisfaction of the Mortgagee and all installments of principal and interest in arrears (including interest at six per centum (6%) after declaration as aforesaid) and the reasonable charges and expenses of the Mortgagee, its agents and attorneys, shall have been paid, then and in every such case the Mortgagee shall waive any such default by written notice to that effect to the Shipowner; but no such waiver shall extend to nor affect any subsequent or other default nor impair any rights or remedies consequent thereon;

(2) bring suit at law, in equity or in admiralty, as it may be advised, to recover judgment for any and all amounts due under said notes, or any of them, or otherwise hereunder, and collect the same out of any and all property of the Shipowner whether covered by this Mortgage or otherwise;

[fol. 149] (3) retake the Vessel without legal process wherever the same may be; and the Shipowner or other person in possession forthwith upon demand of the Mortgagee shall surrender to the Mortgagee possession of the Vessel and the Mortgagee may hold, lay-up, lease,

charter, operate, or otherwise use the Vessel for such time and upon such terms as it may deem to be for its best advantage, accounting only for the net profits, if any, arising from such use of the Vessel and charging upon all receipts from the use of the Vessel or from the sale thereof by court proceedings or pursuant to Subsection (4) next following, all costs; expenses, charges, damages, or losses by reason of such use; and if at any time the Mortgagee shall avail itself of the right herein given it to retake the Vessel and shall retake it the Mortgagee shall have the right to dock the Vessel for a reasonable time at any dock, pier or other premises of the Shipowner without charge, or to dock it at any other place at the cost and expense of the Shipowner;

(4) (in addition to any and all other rights, powers, and remedies elsewhere in this Mortgage or by law granted to and conferred upon the Mortgagee) sell the Vessel upon such terms and conditions as to the Mortgagee shall seem best calculated to promote the objects of the Merchant Marine Act, 1936, as amended, including the right to sell and dispose of the Vessel, free from any claim of or by the Shipowner, at public sale, by sealed bids or otherwise, by first publishing notice of any such sale for ten (10) consecutive days, except Sundays, in some newspaper published in the City of New York, State of New York, and in some newspaper, if any, published at the place designated for such sale, and by mailing notice of such sale to the Shipowner at its last known address, and any such sale may be [fol. 150] held at such place and at such time as the Mortgagee in such notices may have specified, or may be adjourned by the Mortgagee from time to time by announcement at the time and place appointed for such sale or for such adjourned sale, and without further notice or publication the Mortgagee may make any such sale at the time and place to which the same shall be so adjourned; and any such sale may be conducted without bringing the Vessel to the place designated for such sale and in such manner as the Mortgagee may deem to be for its best advantage, and the Mortgagee may become the purchaser at any such sale, and shall have the

right to credit on the purchase price any or all sums of money due to the Mortgagee under the said notes, or otherwise hereunder.

The Shipowner does hereby irrevocably appoint the Mortgagee and its assigns the true and lawful attorney and attorneys of the Shipowner, in its name and stead to make all necessary transfers of the Vessel, and for that purpose it or they shall execute all necessary instruments of assignment and transfer, the Shipowner hereby ratifying and confirming all that its said attorney or attorneys shall lawfully do by virtue hereof. Nevertheless, the Shipowner shall, if so requested by the Mortgagee, ratify and confirm such sale by executing and delivering to the purchaser of the Vessel such proper bill of sale, conveyance, instrument of transfer and releases as may be designated in such request.

The Shipowner covenants and agrees that in addition to any and all other rights, powers, and remedies elsewhere in this Mortgage granted to and conferred upon the Mortgagee, the Mortgagee in any suit to enforce any of its rights, powers, or remedies, if an event of [fol. 151] default has occurred and has not been cured, shall be entitled as a matter of right and not as a matter of discretion (i) to the appointment of a receiver or receivers of the Vessel and that any receiver so appointed shall have full rights and powers to use and operate the Vessel, and (ii) to a decree ordering and directing the sale and disposal of said Vessel, and the Mortgagee may become the purchaser at said sale, and the Mortgagee shall have the right to credit on the purchase price any and all sums of money due to the Mortgagee under the said notes, or otherwise hereunder.

Section 2. In the event that the Vessel shall be arrested or detained by a Marshal or other Officer of any court of law, equity or admiralty jurisdiction in any country or nation of the world or by any Government or other authority and shall not be released from arrest or detention within fifteen (15) days from the date of arrest or detention, the Shipowner does hereby authorize and empower the UNITED STATES MARITIME COMMISSION, or any

public officer or officers who may by law succeed said Commission, in the name of the Shipowner, or its successors or assigns, to apply for and receive possession of and to take possession of the Vessel with all the rights and powers that the Shipowner, or its successors or assigns might have, possess and exercise in any such event; and this power of attorney shall be irrevocable and may be exercised not only by the officials hereinabove named but also by an appointee or appointees of such Commission with full power of substitution to the same extent as if the said appointee or appointees had been named as one of the attorneys above-named by express designation.

The shipowner also authorizes and empowers the UNITED STATES MARITIME COMMISSION or its appointees or any of them to appear in the name of the Ship-[fol. 152] owner, its successors and assigns, in any court of any country or nation of the world where a suit is pending against the Vessel because of or on account of any alleged lien against the Vessel from which the Vessel has not been released and to take such proceedings as to them or any of them may seem proper towards the defense of such suit and the discharge of such lien, and all expenditures made or incurred by them or any of them for the purpose of such defense or discharge shall be a debt due from the Shipowner, its successors and assigns, to the UNITED STATES OF AMERICA, and shall be secured by the lien of this Mortgage in like manner and extent as if the amount and description thereof were written herein.

Section 3. Each and every power and remedy herein specifically given to the Mortgagee or otherwise in this Mortgage shall be cumulative and shall be in addition to every other power and remedy herein specifically given or now or hereafter existing at law, in equity, admiralty or by statute, and each and every power and remedy whether specifically herein given or otherwise existing may be exercised from time to time and as often and in such order as may be deemed expedient by the Mortgagee, and the exercise or the beginning of the exercise of any power or remedy shall not be construed to be a waiver of the right to exercise at the same time or thereafter any other power or remedy. No delay or omission by the Mortgagee or by any of the holders

of the notes secured hereby in the exercise of any right or power or in the pursuance of any remedy accruing upon any default as above-defined shall impair any such right, power or remedy or be construed to be a waiver of any such event of default or to be any acquiescence therein; nor shall the acceptance by the Mortgagee of any security or of any payment of or on account of any note or notes maturing after any event of default or of any payment on account of any [fol. 153] past default be construed to be a waiver of any right to take advantage of any future event of default or of any past event of default not completely cured thereby.

Section 4. In case the Mortgagee shall have proceeded to enforce any right, power or remedy under this Mortgage by foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Mortgagee, then and in every such case the Shipowner and the Mortgagee shall be restored to their former positions and rights hereunder with respect to the property subject or intended to be subject to this Mortgage, and all rights, remedies and powers of the Mortgagee shall continue as if no such proceedings had been taken.

Section 5. The proceeds of the sale of the Vessel and the net earnings from any management, charter, or other use of the same by the Mortgagee under any powers above specified, including the proceeds of any claims for damages on account of the Vessel, and of any insurance received by the Mortgagee from the account of the Vessel while exercising any such power shall be applied as follows:

First: To the payment of all expenses and charges including the expenses of any sale, the expenses of any retaking, attorneys' fees, court costs, and any other expenses or advances made or incurred by the Mortgagee in the protection of its rights or the pursuance of its remedies hereunder, and to provide adequate indemnity against liens claiming priority over or equality with this Mortgage;

Second: To the payment of all sums and notes secured hereby, and of all damages liquidated or otherwise, hereunder, together with interest thereon;

[fol. 154] *Third*: To the payment of any surplus thereafter remaining to the Shipowner or to whomsoever may be entitled thereto.

In the event that the proceeds are insufficient to pay the amounts specified in paragraphs "First" and "Second" above, the Mortgagee shall be entitled to collect the balance from the Shipowner, or any other person liable therefor.

Section 6. If the Shipowner shall make default in the observance or performance of any of the covenants, conditions or agreements in this Mortgage on its part to be performed or observed, the Mortgagee may in its discretion do all acts and make all expenditures necessary to remedy such default, including, without limitation of the foregoing, entry upon the Vessel to make repairs, and the Shipowner shall promptly reimburse the Mortgagee, with interest at the rate of six per centum (6%) per annum, for any and all expenditures so made or incurred and until the Shipowner has so reimbursed the Mortgagee for such expenditures the amount thereof shall be a debt due from the Shipowner to the Mortgagee and payment thereof shall be secured by the lien of this mortgage in like manner and extent as if the amount and description thereof were written herein; but the Mortgagee though privileged so to do shall be under no obligation to the Shipowner to make any such expenditures nor shall the making thereof relieve the Shipowner of any default in that respect. The Shipowner shall also reimburse the Mortgagee promptly with interest at the rate of six per centum (6%) per annum for any and all advances made or incurred by the Mortgagee at any time in retaking the Vessel or otherwise protecting its rights hereunder, and for any and all damages sustained by the Mortgagee from or by reason of any default or defaults of the Shipowner.

[fol. 155]

ARTICLE III

In case the Shipowner permits the Vessel by voluntary act or voluntary omission to become a Vessel not documented under the laws of the United States, the Shipowner shall pay to the Mortgagee an amount equal to the difference between the interest in fact paid or which may be payable

on account of the Vessel, computed at the rate prescribed in this Mortgage, and the amount such interest would have been in the case of the Vessel if it had been computed at seven per centum (7%) per annum from the date of this Mortgage.

ARTICLE IV

Until some one or more of the events of default hereinbefore described shall happen, the Shipowner shall be suffered and permitted to retain actual possession and use of the Vessel.

ARTICLE V

Section 1. This Mortgage may be executed simultaneously in any number of counterparts and all such counterparts executed and delivered each as an original shall constitute but one and the same instrument.

Section 2. All the covenants, promises, stipulations and agreements of the Shipowner in this Mortgage contained shall bind the Shipowner and its successors and assigns and shall inure to the benefit of the Mortgagee and its assigns, and all the covenants, promises, stipulations and agreements of the Mortgagee shall bind the Mortgagee and its assigns and shall inure to the benefit of the Shipowner and its successors and assigns, whether so expressed or not.

Section 3. Wherever and whenever herein any right, power, or authority is granted or given to the UNITED [fol. 156] STATES OF AMERICA whether named as Mortgagee or otherwise, such right, power and authority may be exercised in all cases by the UNITED STATES MARITIME COMMISSION or such agent or agents as it may appoint, and the act or acts of such agent or agents when taken shall constitute the act of the Mortgagee hereunder.

ARTICLE VI

For purpose of endorsement of this Preferred Mortgage on the document of the Vessel as required by law (Section D of Ship Mortgage Act, 1920, as amended), the total amount is Two Million One Hundred Forty-three Thousand

Eight Hundred Dollars (\$2,143,800.00) and interest and performance of mortgage covenants, the date of maturity is February 27, 1966, and the discharge amount is the same as the total amount.

IN WITNESS WHEREOF, the Shipowner has executed this Mortgage the day and year first above written.

WATERMAN STEAMSHIP CORPORATION

By: N. NICOLSON
President

(CORPORATE SEAL)

ATTEST:

J. A. TOWNSEND
Secretary

By: H. C. SLATON
Treasurer

APPROVED:

? ? ? ? ?

W. R. FITCH

General Counsel
U. S. Maritime Commission

[fol. 157] ACKNOWLEDGMENT

STATE OF ALABAMA,
COUNTY OF MOBILE, ss.:

I, Mary B. Langsdale, a Notary Public in and for said county and state, do hereby certify that N. Nicolson, whose name as President of the WATERMAN STEAMSHIP CORPORATION, a corporation duly organized and existing under the laws of the State of Alabama, is signed to the foregoing Preferred Mortgage and who is known to me, acknowledged before me on this day that, being informed of the contents of the Preferred Mortgage, he as such officer

and with full authority, executed the same voluntarily for and as the act of said Corporation.

Given under my hand this the 27th day of February, 1946.

MARY B. LANGSDALE
Notary Public

(SEAL)

My Commission Expires:
4/19/47

AFFIDAVIT

STATE OF ALABAMA,
COUNTY OF MOBILE, ss.:

N. Nicolson being duly sworn, deposes and says that he is President of WATERMAN STEAMSHIP CORPORATION [fol. 158], the corporation described in and which executed the above and foregoing mortgage; that said mortgage is made by said WATERMAN STEAMSHIP CORPORATION in good faith and without any design to hinder, delay or defraud any existing or future creditor of the said WATERMAN STEAMSHIP CORPORATION, or any lienor of the mortgaged vessel; and that this affidavit is made pursuant to an order of the Board of Directors of said WATERMAN STEAMSHIP CORPORATION.

N. NICOLSON

(SEAL).

Subscribed and sworn to before me
this 27th day of February, 1946.

MARY B. LANGSDALE
Notary Public.
Notary Public, Mobile County
My Commission Expires 4/19/47

[fol. 159]

Form No. 4297-A
May 1939
Cat. No. M. C. 1-1939

OWNER OR MORTGAGEE OF VESSEL
(Section 46, Shipping Act, 1916, as amended)
U. S. C., Title 46, Sec. 800, 46 Stat. 902
UNITED STATES MARITIME COMMISSION

OATH OF OFFICER OF INCORPORATED COMPANY*

I, J. A. Townsend, of Mobile, Alabama,
swear or affirm that I am Secretary of the Walden Steamship Corporation
a corporation organized under the laws of the State of Alabama
with offices at: Mobile, Alabama; that said corporation is the owner (or)
mortgagee of the vessel called Walden
of Mobile, Alabama, official number 24000, gross 2400
net 2400, built in 19 28, at Mobile, Alabama,
as appears by the certificate of the U.S. Maritime Commission, Mobile, Alabama,
Walden, 19 28, surrendered and Thomas E. Townsend, Acting Administrator
(Give name of surrenderer)
that I am a citizen of the United States of America by birth, having been born at Mobile,
Alabama, (State) on October 19th, 1900, (Date of Birth) (City)

Form No. 4297-A
May 1939
Cat. No. M. C. 1-1939

(Explanatory clause prescribed by United States Maritime Commission for execution and attachment as said when desired by party making oath on behalf of corporate owner or mortgagee of vessel as form (No. 4297) prescribed by United States Maritime Commission pursuant to section 42 of the Shipping Act, 1916, as amended)

The basis for the statements of facts above recited with respect to the stock ownership and control of voting power of the company, is as follows: (1) The stock books of the company show that on February 27, 1946, 90 per centum of the outstanding stock of the company was owned of record by persons whose addresses on the stock books of the company are in the United States; (2) I know of no substantial change in such percentage since that date; and (3) investigation has failed to disclose the existence of facts or relationships with respect to voting power and control contrary to those above recited.

* This date must be within 30 days of date of oath.

* The exact figure as disclosed by the stock books of the company must be given and the per centum figure must be not less than 50 per centum.

U. S. GOVERNMENT PRINTING OFFICE 16-21555

ON February 27, 1946, (Date) at Mobile, Alabama, (District, county, or State)

Subscribed and sworn to before me* this 27 day of February, 19 46.

[Signature]
[Signature]

* This oath is to be taken whenever any bill of sale, mortgage, hypothecation, or endorsement, or assignment, or transfer, or interest therein, is presented by a corporation to any collector of customs for recording.

1. Insert "President," "Secretary," or "Treasurer," as the case may be.

2. Insert full corporate name of company.

3. Insert business address of corporation.

4. Strike out word or expression not appropriate.

5. Insert other named officer's name known entitled to American registry, when appropriate.

6. U. S. document now surrendered, or document last surrendered heretofore (U. S. C., Title 46, Sec. 800).

7. Strike out reference to naturalization if member is native-born citizen.

8. A notary or other person duly qualified and authorized by law to administer oaths.

U. S. GOVERNMENT PRINTING OFFICE 16-21555

[fol. 161]

STIPULATION G

EXHIBIT 26

ESTIMATED COST AND VALUATION STATEMENT

FAIRPORT

MC Hull 1614

BLDR. Hull 36

Builder:	Purchaser
Gulf Shipbuilding Company	Waterman Steamship Corp.

MCc-13634 dated 1-21-43	MCc-40639 dated 7-12-45
-------------------------	-------------------------

Estimated Construction Cost by Shipbuilder	\$2,452,990.34
--	----------------

Less National Defense Features	70,000.00
--------------------------------	-----------

2,382,990.34

Stores (Medicine)	400.00
-------------------	--------

2,283,390.34

Outfitting & Equipment	—0—
------------------------	-----

Launching & Delivery Fees (See Commission Action dated 11-3-43)	—0—
--	-----

Add:

Interest on Progress Payments made to Ship- builder @ 3-1/2% per annum to February 27 1946	66,680.44
--	-----------

2,450,070.78

114

Estimated Cost
to Purchaser\$2,450,070.78

Less Cash down
Payment

12-1/2% 306,258.85 306,258.85

2,143,811.93

[fol. 162]

20 Notes at

\$107,190.00 2,143,800.00 11.93

Total cash Payment\$ 306,270.78

Mortgage 2,143,800.00

\$2,450,070.78 \$2,450,070.78

Daily Interest Rate \$173.68740

Estimated Cost to

Purchaser\$2,450,070.78

Deduct Mortgage .. 2,143,800.00

Cash Balance Due

on Delivery\$ 306,270.78

Construction Audit Section

Ship Sales Unit

6-27-46

STIPULATION G

EXHIBIT 27

25, D.C.

February 21, 1946

Edouard F. Henriques, Esquire
Regional Attorney
U.S. Maritime Commission
348 Baronne Street
New Orleans 12, Louisiana

Dear Mr. Henriques:

Re: SS FAIRPORT (249072)—Sale under Mortgage to
Waterman Steamship Corporation:

I send you herewith bill of sale in duplicate, one counterpart of preferred mortgage, and form of note for use in [fol. 163] closing the sale of the SS FAIRPORT under mortgage to Waterman Steamship Corporation, which is now scheduled for closing at Mobile February 27, 1946.

I am sending direct to Waterman Steamship Corporation at Mobile six counterparts of the preferred mortgage form and the twenty notes. In this connection you and the Buyer should make certain that inasmuch as the mortgage and notes are dated February 27, 1946 (at the Buyer's express request), they should not be acknowledged prior to that date.

As stated on the first page of the mortgage, the purchase price of the SS FAIRPORT to the Buyer on February 27, 1946, is \$2,450,070.78, payable on or before the day of closing in the sum of \$306,270.78 and the balance as provided in the mortgage and notes. Should the closing be delayed, however, there should be collected for each day of delay after February 27 the sum of \$173.68740.

It is my understanding that this vessel is to be requisitioned by the War Shipping Administration on a bareboat basis simultaneously with delivery to the Buyer, so that the Buyer will not be required to place any insurance to meet the mortgage requirements.

As stated in the mortgage, the agreement for the sale of this vessel is dated as of the 2d day of November, 1945.

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Edouard F. Henriques, Esquire—2/21/46—2

[fol. 164] I am sending a copy of this letter to the Buyer and to the Collector of Customs at Mobile for their information.

Very truly yours,

"Signed" WADE H. SKINNER
Wade H. Skinner
General Counsel

Enclosures

WRFitch/amb

cc: Waterman SS Corporation
Merchants National Bank Bldg., Mobile, Ala.

Attn: Mr. H. C. Slaton, Vice President

Collector of Customs, Mobile, Alabama

Director of Insurance

P. S. Since preparing for foregoing, I have been advised that War Shipping Administration will not requisition the use of this vessel at the time of delivery. It will therefore be necessary for the Buyer to obtain commercial insurance on this vessel as required by the mortgage to the satisfaction of our Insurance Division, effective on delivery. This should be done prior to the time of passing of title to the Buyer. You should, therefore, receive advices from this office or the Insurance Division of the Maritime Commission that this has been done prior to the delivery of the bill of sale.

[fol. 165] STIPULATION G — EXHIBIT 28

COUNTERPART IV

Contract No. MCc-31165.

CONTRACT

between

UNITED STATES MARITIME COMMISSION

and

WATERMAN STEAMSHIP CORPORATION
FOR THE PURCHASE OF THE VESSEL
DESIGNATED CONTRACTOR'S HULL No. 28
— COMMISSION'S HULL NO. 1606

THIS AGREEMENT made as of the 14th day of August, 1944, between UNITED STATES MARITIME COMMISSION (herein called the "Commission") and WATERMAN STEAMSHIP CORPORATION, a corporation organized and existing under the laws of the State of Alabama, (herein called the "Buyer"),

WHEREAS:

1. The Commission and Gulf Shipbuilding Corporation, an Alabama corporation (herein called the "Contractor"), entered into a contract dated January 21, 1943 (herein called the "Construction Contract"), a copy of which contract is attached hereto and marked "Exhibit A", for the construction and delivery of a vessel designated Contractor's Hull No. 28 and Commission's Hull No. 1606, now named HASTINGS and herein called the "Vessel") in accordance with the plans and specifications referred to therein for the consideration therein set forth; and

[fol. 166] 2. Pursuant to the provisions of the Merchant Marine Act 1936, as amended, the Commission has agreed to sell the Vessel to the Buyer under the terms and conditions hereinafter set forth and has made all necessary findings in connection therewith required under the provisions of said Merchant Marine Act of 1936, as amended.

NOW, THEREFORE, in consideration of the premises and mutual promises hereinafter set forth, the parties hereto agree as follows:

ARTICLE 1. *Agreement to Purchase.* Subject to the provisions hereinafter set forth, the Buyer agrees to purchase from the Commission and the Commission agrees to sell to the Buyer the Vessel (named HASTINGS and designated Contractor's Hull No. 28 and Commission's Hull No. 1606) if and when constructed by the Contractor and delivered to and accepted by the Commission in accordance with the terms of the Construction Contract (as amended from time to time), fully outfitted and equipped as provided in the Construction Contract.

ARTICLE 2. *Acceptance of the Vessel by the Buyer—Bill of Sale.* The Commission agrees to deliver and the Buyer agrees to accept delivery of the Vessel concurrently with the acceptance of said Vessel by the Commission from the Contractor and its documentation under the laws of the United States. At the time of delivery of the Vessel by the Commission to the Buyer, the Commission shall execute and deliver to the Buyer a Bill of Sale, in the usual Government form, conveying the Vessel to the Buyer with warranties of title and freedom from liens.

ARTICLE 3. *Purchase Price of Vessel.* The Buyer agrees to pay at the times and in the manner hereinafter set [fol. 167] forth as purchase price of the Vessel the full cost to the Commission of the Vessel, including outfitting and equipping the Vessel, exclusive of the cost of national defense features, upon completion and delivery in accordance with said Construction Contract dated January 21, 1943, plus interest at the rate of $3\frac{1}{2}$ per centum per annum on payments made by the Commission on account of the cost of the construction of, or outfitting or equipping, the Vessel from date of such payments to date of delivery of the vessel or until date the Commission receives reimbursement therefor from the Buyer (to the extent of such reimbursement); Provided, That the purchase price shall not be increased on account of any changes in the plans and specifications of the Vessel heretofore or hereafter authorized by the Commission for the purpose of incorporating features in the Vessel

which the Commission determines to be "national defense features."

It is understood and agreed between the parties hereto that the cost of any national defense features incorporated in the Vessel shall be borne by the Commission.

ARTICLE 4. *Payment of Purchase Price of Vessel.* The purchase price of the vessel, including interest as provided in Article 3 hereof, shall be paid by the Buyer upon delivery of the Vessel by the Commission to the Buyer, as follows:

(a) The Buyer shall, simultaneously with the execution and delivery of this contract by the Commission to the Buyer, pay to the Commission in cash the sum of \$325,000 as part of the purchase price of the Vessel, plus interest as provided in Article 3 hereof.

(b) In the event the amount to be paid in cash, including interest, by the Buyer as set forth in paragraph (a) of this [fol. 168] Article 4 does not equal $12\frac{1}{2}$ per cent of the purchase price of the Vessel, as tentatively determined hereunder, then and in that event the Buyer shall pay to the Commission in cash, upon delivery of the Vessel and simultaneously with delivery of the promissory notes referred to in paragraph (c) of this Article 4, such an amount as may be necessary when added to said sum of \$325,000 to equal $12\frac{1}{2}$ per cent of the purchase price of the Vessel, plus interest as hereinbefore described.

(c) Upon delivery of the Vessel from the Commission to the Buyer, the Buyer shall give to the Commission its twenty negotiable promissory notes and a First Preferred Mortgage on the Vessel, securing said notes, in substantially the latest standard form of the Commission. Said notes shall be of equal principal amounts, shall mature one each year during the twenty years succeeding the date of delivery of the Vessel, and shall bear interest at the rate of $3\frac{1}{2}$ per centum per annum, payable semi-annually.

The aggregate principal amount of the notes given upon the date of delivery of the Vessel shall be equal to the unpaid balance of the purchase price required to be paid under the provisions of Article 3 hereof.

In the event the actual cost of the Vessel as finally determined by the Commission subsequent to the date of delivery of the Vessel is less than the total amount of the payments made by the Buyer under the provisions of paragraphs (a) and (b) of this Article 4 and the amount secured by the First Preferred Mortgage to be given with respect to the Vessel, there shall be an appropriate adjustment of the principal amount of the notes given by the Buyer to evidence the deferred payments of the purchase price of the [fol. 169] Vessel, such adjustment to be made as of the date of delivery of the Vessel. In the event the actual cost of the Vessel as finally determined by the Commission under the provisions of Article 3 hereof is more than the total amount of the payments made by the Buyer under the provisions of paragraphs (a) and (b) of this Article 4 and the amount secured by the First Preferred Mortgage to be given with respect to the Vessel, the Buyer shall pay to the Commission in cash the amount of such deficiency with interest at 3½ per cent per annum from date of delivery of said Vessel.

The determination by the Commission of the purchase price of the Vessel shall be final and conclusive on the parties hereto.

Said payments, both as to cost price and interest, shall be tentatively computed and paid upon the delivery of the Vessel as hereinabove provided, subject to revision and adjustment between the parties as soon as the final amount can be determined in accordance with the foregoing provisions.

ARTICLE 5. *Insurance—Insurance Companies.*

(a) The Buyer shall secure and maintain the insurance required under the provisions of the First Preferred Mortgage to be given hereunder; provided, however, that the Buyer shall not be required to secure or maintain any insurance on the New Vessel other than total loss only, in the amount of not less than One Hundred Ten per centum (110%) of the principal amount of the promissory notes secured by the mortgage given on the New Vessel, with loss, if any, payable to the Commission for distribution to the United States or the Buyer as interest may appear, in the event that the Buyer shall deposit with the Commission, under a form of agreement satisfactory to the Commission,

[fol. 170] United States Government Bonds and/or other obligations, acceptable to the Commission, in principal amount not less than One Hundred Ten per centum (110%) of the principal amount of the promissory notes secured by said mortgage, said bonds and/or other obligations to constitute additional security for the due and punctual payment of said promissory notes. It is understood that the Buyer may secure and maintain any other insurance as it may determine in its own discretion and may be named as sole beneficiary in any policies so secured and maintained.

Upon payment by the Buyer of all principal and all interest due on any one or more of said promissory notes, a proper part, so nearly as may be practicable, of the bonds and/or other obligations deposited with the Commission as above provided, shall be released by the Commission and duly delivered to the Buyer.

(b) The policies of insurance required hereunder and the underwriters or underwriting funds issuing the same shall be subject to the approval of the Commission, and the Buyer agrees to keep fully paid the premiums and other charges on such insurance.

(c) The Buyer agrees that it will not do any act, nor voluntarily suffer nor permit any act to be done, whereby any insurance shall or may be suspected, impaired, or defeated and will not suffer nor permit the New Vessel to engage in any voyage, nor to carry any cargo not permitted under the policies of insurance in effect, without first covering the New Vessel, to the amount herein provided for, with insurance satisfactory to the Commission for such voyage or the carriage of such cargo.

[fol. 171] **ARTICLE 6.** *Changes in Plans and Specifications.* The Commission agrees that it will not, subsequent to the execution of this Agreement, authorize any changes in the plans and specifications of the Vessel (other than those involving National Defense Features) without the prior consent of the Buyer. All changes in plans and specifications (other than those involving National Defense Features) made subsequent to the execution of this Agreement shall inure to the benefit of or will be for the account of the Buyer, that is, the total amount of the increases in contract

price on account of such changes shall be added to the purchase price and the total amount of decreases in contract price on account of such changes shall be deducted from the purchase price.

ARTICLE 7. *Rights upon Default by the Contractor—Loss of Vessel before Completion.* If the Contractor defaults in the construction of the Vessel, the Buyer shall have no rights against the Commission for damages which it may sustain on account of failure to deliver the Vessel or delay in the delivery. Upon the taking by the Commission (in its discretion) of the action provided in the event of default under the Construction Contract, the rights of the Buyer shall be as follows:

(a) *In the Event of Completion by the Commission:* If the Commission, acting directly or through a contractor, proceeds with the work to the completion of the Vessel, the Buyer shall purchase the Vessel on completion and shall pay therefor the purchase price determined as provided in Article 3 hereof; Provided, That there shall be no deductions from the purchase price on account of delay in completion and delivery of the Vessel, in excess of the amounts actually recovered on account of such delay by the Commission. In the event of such completion by the Commission, adjustments shall be made for deficiencies and failure to [fol. 172] meet the guaranties in the same amounts as if the Vessel had been completed under the Construction Contract by the Contractor. Legal fees and other expenses incurred in taking possession of the Vessel and any property of the Contractor, or in the taking of any other extraordinary action made necessary by the Contractor's default and not related to construction, shall not be included in determining the purchase price of the Vessel.

(b) *If the Commission does not Complete the Vessel:* If the Commission determines not to complete the Vessel, it shall give notice to Buyer of such determination and thereafter the Buyer shall have no rights hereunder, except to the return of its installment payments as hereinafter stated, without interest. The Commission shall pay to the Buyer from the proceeds of the sale of the Vessel, so far as available after deducting expenses of the sale, and from any

amounts recovered from the Contractor and its surety (and only from such sources) an amount equal to the cash payments, including interest paid by the Buyer, theretofore made by the Buyer pursuant to Article 4 hereof. The Buyer shall have no right to any payments from the Commission for reimbursement for expenses incurred by it. If, after default by the Contractor, the Commission sells the Vessel, the Buyer may become a purchaser at such sale, in which event the payments (excluding payments of interest) previously made hereunder on account of the purchase price (and not repaid) may be credited on the purchase price. It is understood that the Commission may determine in its discretion, the time and place of sale and may impose such conditions with respect thereto as it may deem advisable, including provision for completion of the Vessel and for her operation in a manner reasonably calculated to carry out effectively the purposes and policy of the Act.

[fol. 173] (c) *If Vessel is Lost before Completion by Contractor:* In the event that an actual or constructive total loss of the Vessel shall occur prior to its delivery by the Contractor to the Commission and the Construction Contract shall be cancelled as therein provided, the Buyer shall be entitled to any amounts received by the Commission, in accordance with the provisions of the Construction Contract, from the Contractor as refund of installment payments made by the Commission or as proceeds of any insurance, in excess of the amount which is then payable to the Commission under the provisions of Article 4 hereof.

ARTICLE 8. *Documentation of Vessel.* Upon its completion the Vessel shall be documented under the laws of the United States and shall remain documented under the laws of the United States so long as any mortgage, or any of the notes secured thereby, shall be outstanding.

ARTICLE 9. *Transfer of Rights to Buyer:* The Commission agrees that the Buyer shall have all the rights conferred upon the Commission by provisions of said Construction Contract relating to the Vessel which, by the terms thereof, would be operable in favor of the Commission as Owner from and after the time of completion and delivery of said Vessel by the Contractor to the Commission if the

Commission remained the Owner thereof, and the Commission further agrees to execute all instruments requested by the Buyer to effectuate such transfer of rights.

ARTICLE 10. *Employment of Member of Congress.* The Buyer agrees not to employ any Member of Congress either with or without compensation, as an attorney, agent, officer or director.

[fol. 174] ARTICLE 11. *Officials not to Benefit nor be Employed.* No member of or Delegate to Congress, nor Resident Commissioner, shall be admitted to any share or part of this contract or to any benefit that may arise therefrom, except as provided in Section 116 of the Act approved March 4, 1909 (35 Stats. 1109).

ARTICLE 12. *Future Legislation.* The Commission agrees that in the event of the enactment of legislation authorizing the sale by the United States of vessels, constructed or sold under conditions similar to the construction and sale of the Vessel herein agreed to be sold, at a price less than the actual construction cost thereof, exclusive of the cost of national defense features installed in any such vessel, the Buyer shall be granted the benefit of such legislation with respect to the sales price of the Vessel, in which event the Commission shall make an appropriate adjustment with the Buyer on the purchase price of the Vessel.

IN WITNESS WHEREOF, the parties hereto, have executed five original counterparts of this Agreement as of the day and year first above written.

UNITED STATES MARITIME COMMISSION

By G. S. LAND
Chairman

(SEAL)

ATTEST:
JOHN R. TANKARD
Acting Assistant Secretary

[fol. 175]

WATERMAN STEAMSHIP CORPORATION

By **E. A. ROBERTS**
President

(CORPORATE SEAL)

ATTEST:

J. A. TOWNSEND
Secretary

Approved as to form:

!!!!!!

General Counsel

United States Maritime Commission

STIPULATION G

EXHIBIT 29

**PREFERRED MORTGAGE
WATERMAN STEAMSHIP CORPORATION**

To

UNITED STATES OF AMERICA

On

SS HASTINGS

THIS MORTGAGE, dated the 17th day of November, 1944, by and between **WATERMAN STEAMSHIP CORPORATION**, a corporation organized and existing under the laws of the State of Alabama (herein called the "Shipowner") and **UNITED STATES OF AMERICA**, repre- [fol. 176] sented by the **UNITED STATES MARITIME COMMISSION** (herein called the "Mortgagee").

WHEREAS:

1. As of the 14th day of August, 1944, the Shipowner and the Mortgagee entered into a certain contract for the pur-

chase by the Shipowner from the Mortgagee of the SS HASTINGS (herein called the "Vessel") hereinafter described;

2. As part of the consideration for the sale of the Vessel, the Shipowner agreed to pay to the Mortgagee the sum of Two Million Six Hundred Forty-Two Thousand Seven Hundred Six Dollars and Three Cents (\$2,642,706.03) payable Three Hundred Fifty-five Thousand Seven Hundred Six Dollars and Three Cents (\$355,706.03) in cash on or before delivery and the balance in twenty (20) equal installments, to be evidenced by twenty (20) negotiable promissory notes of the Shipowner and to be secured by a First Preferred Mortgage on the Vessel to be given by the Shipowner to the Mortgagee in the form of this Preferred Mortgage;

3. Pursuant to the terms of said purchase agreement, the Mortgagee has simultaneously herewith conveyed to the Shipowner, by proper bill of sale, the Vessel, and the Shipowner is now the sole owner of said Vessel;

4. The Shipowner is justly indebted to the Mortgagee in the sum of Two Million Two Hundred Eighty-seven Thousand Dollars (\$2,287,000.00) upon the purchase price of the Vessel; and

5. The Shipowner, for the purpose of duly securing the payment of said indebtedness and the interest thereon, has [fol. 177] duly authorized and directed the execution and delivery of this First Preferred Mortgage and the negotiable promissory notes given herewith and herein described to the Mortgagee;

NOW, THEREFORE, THIS MORTGAGE WITNESSETH:

That in consideration of the premises and of the sum of Two Dollars (\$2.00) duly paid by the Mortgagee at or before the sealing and delivery of these premises and for other valuable considerations, receipt whereof is hereby acknowledged by the Shipowner, and in order to secure payment of said principal sum of Two Million Two Hundred Eighty-seven Thousand Dollars (\$2,287,000.00) and interest thereon at the rate of three and one-half per centum (3½%) per

annum, payable semiannually, as evidenced by the notes hereinafter described and according to the tenor thereof, and the performance and observance of each and every one of the covenants, stipulations, and conditions set forth herein, the Shipowner has granted, bargained, sold, conveyed, transferred, assigned, remised, released, mortgaged, set over and confirmed and by these presents does grant, bargain, sell, convey, transfer, assign, remise, release, mortgage, set over and confirm unto the Mortgagee and its assigns all of the following described property, to-wit:

The whole of that certain steel Vessel HASTINGS, Official Number 246617, of about 6165 gross tons and 3519 net tons register, which Vessel is more fully described in her Marine document, a true copy of which is hereto attached and made a part hereof, together with her engines, boilers, machinery, masts, bowsprit, boats, anchors, cables, rigging, tackle, apparel, furniture, and all other appurtenances thereunto appertaining and belonging; and all additions, [fol. 178] improvements and replacements hereafter made in or to the Vessel or any part or appurtenance or equipment thereof;

TO HAVE-AND TO HOLD all and singular the above granted and described property unto the Mortgagee and its assigns to its and their own use, benefit and behoof forever;

PROVIDED, HOWEVER, and these presents are upon the condition that if the Shipowner, or its successors or assigns shall pay or cause to be paid to the Mortgagee or its assigns the said principal sum of Two Million Two Hundred Eighty-seven Thousand Dollars (\$2,287,000.00) and interest thereon at the rate of three and one-half per centum (3½%) per annum, payable semiannually, by payment of the following described notes and interest thereon in accordance with the terms of such notes, and shall pay to the Mortgagee or assigns any and all other sums that may be owing and payable to the Mortgagee or assigns hereunder, then this mortgage and the estate and rights hereby granted shall cease, determine and be void; otherwise to remain in full force and effect.

Said notes are dated November 17, 1944, and are in the aggregate principal amount of Two Million Two Hundred

Eighty-seven Thousand Dollars (\$2,287,000.00) and are numbered 1 to 20 inclusive; each note is for the principal sum of One Hundred Fourteen Thousand Three Hundred Fifty Dollars (\$114,350.00) and the dates of their maturity [fol. 179] respectively, are November 17, of the years set opposite their numbers hereinbelow:

<i>Number of Note</i>	<i>Year of Maturity</i>	<i>Number of Note</i>	<i>Year of Maturity</i>
1	1945	11	1955
2	1946	12	1956
3	1947	13	1957
4	1948	14	1958
5	1949	15	1959
6	1950	16	1960
7	1951	17	1961
8	1952	18	1962
9	1953	19	1963
10	1954	20	1964

Whenever hereinafter the word "notes" is used, that word shall be deemed to mean and include the above-mentioned notes, which are substantially in the following form, the blanks therein having been appropriately filled:

FORM OF NOTE

No.

\$

On the day of , 19 , for value received, WATERMAN STEAMSHIP CORPORATION, a corporation duly organized and existing under the laws of the State of Alabama, promises to pay to the UNITED STATES OF AMERICA, or order, the principal sum of

(\$)

and to pay interest on said principal sum from the date hereof at the rate of three and one-half per centum (3½%) per annum, payable semiannually, on the day of

and the day of in each year, first payment due , 19 , until the principal sum

[fol. 180] hereof is paid, both principal and interest to be payable at the office of the United States Maritime Commission, Washington, D.C., in any coin or currency of the United States of America which, at the respective dates of payment thereof, is legal tender for public and private debts.

This note is one of a series of twenty (20) notes, aggregating (\$)

principal amount, of like form and tenor, save for their respective numbers and dates of maturity, each of which is issued under and secured by a First Preferred Mortgage, dated , 19 , upon the American steel vessel , Official Number , to which mortgage reference is hereby made for a description of the property thereby mortgaged, the nature and extent of said security, and the rights of the respective holders of the notes in respect of said security. In case an event of default has occurred under said Mortgage, this note may, at the option of the holder, be declared and become immediately due and payable, and the holder shall have other remedies therein or by law provided, all as more fully set forth in said mortgage.

This note may be redeemed at the option of the maker on any semiannual interest date upon at least thirty (30) days' prior written notice, by payment of the principal amount hereof, together with interest thereon to date of payment.

IN WITNESS WHEREOF the undersigned has caused this note to be executed by its officers thereunto duly authorized, the day of , 19 ..

WATERMAN STEAMSHIP CORPORATION

By:
President

By:
Treasurer

ATTEST:

.....
Secretary

[fol. 181] The Shipowner hereby covenants and agrees to pay said balance of the purchase price of said Vessel together with interest thereon as herein and in said notes provided and at all times to keep, perform and observe all and singular the covenants, conditions, stipulations, promises and agreements in this Mortgage and in said notes expressed or implied and on its part to be kept, performed and observed and to pay all sums that may hereafter become due hereunder.

The Shipowner prior to the maturity of the notes shall have the right at its option to redeem any or all of the notes then outstanding on any semi-annual interest date upon at least thirty (30) days' prior written notice to the Mortgagee by the payment of principal amount thereof together with accrued interest thereon to date of payment, but no such redemption shall entitle the Shipowner to a discharge of this Mortgage until all of the covenants, conditions, stipulations and agreements shall have been kept, observed and performed. In case of redemption of less than all of the notes outstanding, the notes to be redeemed shall be selected by the Shipowner.

The Shipowner for itself, its successors and assigns hereby covenants and agrees with the Mortgagee and its successors and assigns that said Vessel and all the appurtenances thereunto appertaining and belonging and all replacements hereafter made in or to the same are to be held by the Mortgagee subject to the further covenants, conditions and uses hereinafter set forth, that is to say:

ARTICLE I

THE SHIPOWNER HEREBY COVENANTS AND AGREES:

Section 1. The Shipowner was duly organized and is now existing as a corporation under the laws of the State of [fol. 182] Alabama and is now, and shall remain during the life of this Mortgage, a citizen of the United States as defined in Section 2 of the Shipping Act, 1916, as amended, and is duly authorized to mortgage the Vessel conveyed hereby, and that all corporate action necessary and required by law for the execution and delivery of this First

Preferred Mortgage, and the good faith affidavit filed herewith, has been duly and effectively taken, and that the aforesaid notes in the hands of the holder thereof are and will be valid and enforceable obligations of the Shipowner in accordance with their terms.

Section 2. The Shipowner lawfully owns and is lawfully possessed of the Vessel free from any lien or incumbrance whatsoever, except liens in favor of the United States, and that it will warrant and defend the title and possession thereto and to every part thereof for the benefit of the Mortgagee against the claims and demands of all persons whomsoever.

Section 3. (a) The Shipowner will, at its own expense, when and so long as this Mortgage, or any of the notes secured hereby, shall be outstanding, insure the Vessel and keep the same insured against all such risks as the Mortgagee from time to time may require, in an amount in dollars, in money of the United States which is legal tender for the payment of public and private debts, equal to the full commercial value of the Vessel, but in no event less than 110 per cent of the amount remaining unpaid on the purchase price of the Vessel from time to time.

(b) Until otherwise required or permitted by the Mortgagee, such insurance shall be as hereinafter specified, that is to say:

(i) Such insurance shall include hull or port risk insurance, and may include such amounts of disbursements and other forms of "total loss only" insurance [fol. 183] as are permitted by the hull or port risk insurance policies. The total amount of insurance in the hull or port risk policies for the Vessel shall equal the valuation of such Vessel stated in such policies.

(ii) While being operated, the Vessel shall always be covered by hull insurance, placed under the form of policy known as American Hull Underwriters Association Form, or under such other form of policy as the Mortgagee may approve, insuring the Vessel against the usual risks covered by such form.

(iii) When and while the Vessel is laid up, in lieu of the aforesaid hull or hull and disbursements insurance, port risk insurance may be taken out thereon by the Shipowner under forms of port risk policies approved by the Mortgagee.

(iv) The Shipowner, at its own expense, when and so long as this mortgage, or any of the notes secured hereby, shall be outstanding, will also keep the said Vessel fully entered in a Protection and Indemnity Association or Club approved by the Mortgagee, in both protection and indemnity classes, or will keep the Vessel fully covered by protection and indemnity clauses in a policy or policies issued by Marine Insurance Companies or Underwriting Funds approved by the Mortgagee, and such protection and indemnity insurance shall also protect the Mortgagee against any liability which the Mortgagee may incur. So long as the Shipowner is not in default hereunder, the Mortgagee shall consent that payment of losses under such insurance shall be made direct to the Shipowner to reimburse it for any loss, damage, or expense suffered or incurred by it and covered by said insurance.

[fol. 184] (c) All insurance required hereunder shall be taken out in the name of the Waterman Steamship Corporation and United States Maritime Commission, for account of whom it may concern, all losses shall be made payable to the United States Maritime Commission, Washington, D. C., and all insurance monies received by said Commission shall be distributed by it as follows:

(i) In the event that insurance (except the insurance required under the foregoing paragraph (b) (iv) of this Section (3) becomes payable under said policies on account of accident or event not resulting in actual or constructive total loss of said Vessel, the Mortgagee shall (a) if the Shipowner is not in default under this Mortgage, consent that the Underwriters pay direct for repairs, salvage, or other charges, or (if the Shipowner shall have first fully repaired the damage or secured complete discharge of the liability insured

against) reimburse the Shipowner therefor; or (b) if the Shipowner is in default under this mortgage, apply the insurance as provided in Article II hereof.

(ii) In the event of an actual or constructive total loss of the Vessel, the Mortgagee shall retain out of insurance payments received on account of said loss, which shall become the sole property of the Mortgagee, any sum or sums that shall be or become owing to the Mortgagee under this mortgage, whether or not the same be then due or payable, together with accrued interest and the cost of collecting the insurance.

(d) When and so long as this Mortgage, or any of the notes secured hereby, shall be outstanding, all policies, binders and cover notes evidencing insurance as required [fol. 185] hereunder shall be delivered to the United States Maritime Commission, Washington, D. C., for its approval and custody.

(e) In the event that any claim or lien is made against the Vessel for loss, damage, or expense which is covered by insurance required hereunder, and it is necessary for the Shipowner to obtain a bond or supply other security to prevent arrest of the Vessel, or to release the Vessel from arrest on account of said claim or lien, the Mortgagee, on request of the Shipowner, may at the sole option of the Mortgagee, assign to any person, firm, or corporation executing a surety or guarantee bond, or other agreement to save or release the mortgaged Vessel from such arrest, all right, title, and interest of the Mortgagee in and to said insurance covering said loss, damage, or expense as collateral security to indemnify against liability under said bond or other agreement.

(f) The Shipowner agrees to keep the premiums and other charges on all insurance required hereunder fully paid. All insurance shall be placed and kept with responsible underwriters in good standing or underwriting funds, satisfactory to the Mortgagee. Unless otherwise permitted by the Mortgagee in writing, all insurance required hereunder shall, in so far as it is, in the judgment of the Mortgagee, practicable and obtainable at reasonable rates, be

placed with American companies, underwriters or underwriting funds and any remaining balance shall, in so far as it is in the judgment of the Mortgagee, practicable and obtainable at reasonable rates, be placed with foreign companies or underwriters which (a) are duly licensed to transact business in the United States and (b) have agents in the United States authorized to issue such policies and (c) have agents or attorneys in the United States upon whom papers and process in legal proceedings against any [fol. 186] such underwriter in a State or Federal Court of the United States can be effectively served, to the end that an appropriate court, in the United States, shall have jurisdiction over any such underwriter in respect to any such policy or policies as fully as such court would have over an American company; and under a policy or policies as to which the United States shall be the place of contract; and, the remaining balance, if any, shall be placed (with foreign companies or underwriters) under policies containing, in so far as practicable, amongst others, the following provision:

"The place of physical and actual issue and delivery of this policy is the City of London, but nevertheless, as between the Assured and the Assurers the place of suit hereon shall be deemed the State of New York, United States of America, and any suit hereon may be brought against this Company in any Court in the State of New York; this policy shall, with respect to validity, construction and enforcement, be governed by and subject to the laws of the State of New York. The summons and other legal processes may be served on this Company by and in behalf of the Assured by mailing a copy thereof by United States registered mail addressed to (Note: Assured shall name in the policy two or more persons, citizens of the United States and legal residents of the State of New York), each of whom this Company hereby authorizes to accept by and in its behalf such summons and other legal processes against this Company in any Court in the State of New York. The mailing, as herein provided, of such summons or other legal process shall be deemed personal service and accepted by this Company as such, and shall be

legal and binding upon this Company for all the purposes of the suit. Final judgment against this Company in any such suit shall be conclusive; and it may [fol. 187] be enforced in other jurisdictions, including Great Britain, by suit on the judgment, a certified or exemplified copy of which shall be conclusive evidence of the fact and of the amount of this indebtedness. The right of the Assured to bring suit as provided herein shall be limited to a suit brought in its own name and for its own account. For the purposes of suit as herein provided, the word 'Assured' includes any mortgagee under a ship mortgage and any person succeeding to the rights of any such mortgagee."

(g) The Shipowner agrees that it will not do any act, nor voluntarily suffer nor permit any act to be done, whereby any insurance shall or may be suspended, impaired, or defeated and will not suffer nor permit the Vessel to engage in any voyage, nor to carry any cargo not permitted under the policies of insurance in effect, without first covering the Vessel, to the amount herein provided for, with insurance satisfactory to the Mortgagee for such voyage or the carriage of such cargo.

Section 4. So long as this Mortgage, or any of the notes secured hereby, shall be outstanding, the Shipowner will not cause nor permit the Vessel to be operated in any manner contrary to law, or contrary to any lawful rules or regulations which the UNITED STATES MARITIME COMMISSION may from time to time prescribe.

Section 5. Neither the Shipowner nor the Master of the Vessel has or shall have any right, power or authority to create, incur or permit to be placed or imposed upon the Vessel any liens whatsoever, other than for crew's wages or salvage.

Section 6. A properly certified copy of this Mortgage shall be carried with the ship's papers on board the Vessel, [fol. 188] and shall be exhibited, on demand, to any person having business with the Vessel, or to any representative of the Mortgagee; and a notice, reading as follows, printed in plain type of such size that the paragraph or reading matter

shall cover a space not less than six inches wide by nine inches high, framed, shall be placed and kept prominently in the chart room and in the Master's cabin of the Vessel:

NOTICE OF MORTGAGE

"This Vessel is covered by a Preferred Mortgage to the UNITED STATES OF AMERICA, under authority of the 'Ship Mortgage Act, 1920,' as amended, to secure payment to the UNITED STATES OF AMERICA of the unpaid purchase price of the Vessel. Under the terms of said mortgage neither WATERMAN STEAMSHIP CORPORATION, nor the Master of the Vessel has any right, power or authority to create, incur or permit to be imposed upon the Vessel any liens whatsoever other than for crew's wages or salvage."

Section 7. If a libel shall be filed against said Vessel, or if the Vessel shall be levied upon or taken into custody, or detained by any proceeding in any court or tribunal or by any Government or other authority, the Shipowner within fifteen (15) days thereafter will cause the Vessel to be released and any lien thereon, other than this Mortgage, to be discharged. In the event a libel is filed against said Vessel, or in the event said Vessel is levied upon or taken into custody or detained by any authority whatsoever, the Shipowner agrees forthwith to notify the UNITED STATES MARITIME COMMISSION thereof by telegram, confirmed by letter, at its office in Washington, D. C.

[fol. 189] *Section 8.* The Shipowner will at all times and at its own cost and expense maintain and preserve the Vessel, so far as may be practicable, in at least as good condition, working order and repair as the Vessel is in at the date of this Mortgage, ordinary wear and tear and depreciation excepted; and will keep the Vessel in such condition as will entitle her to the highest classification and rating for vessels of the same age and type in the American Bureau of Shipping, and annually will furnish to the Mortgagee a certificate by such Bureau that such classification is maintained. The Vessel shall and the Shipowner covenants that

it will, at all times comply with all applicable United States laws, treaties and conventions, and rules and regulations issued thereunder, including particularly, but without limitation by this enumeration, International Convention for Safety of Life at Sea, 1929, and all laws, rules and regulations administered by the United States Coast Guard, Navy Department, the Bureau of Customs, Treasury Department, and the United States Federal Communications Commission, and shall have on board as and when required thereby valid certificates showing compliance therewith. The Shipowner will make no substantial change in the structure, type or speed of the vessel nor change in her rig, without first receiving the written approval thereof by the Commission.

Section 9. The Shipowner will at all times afford the Mortgagee or its authorized representatives full and complete access to the Vessel for the purpose of inspecting the Vessel, its cargoes and papers; and, so long as this Mortgage, or any of the notes secured hereby, shall be outstanding, the Shipowner shall permit a representative of the Mortgagee to make one round trip on one of the regular trips of the Vessel, each calendar year, for the purpose of inspecting the Vessel in full operation at sea, the time of such trip to be selected by the Mortgagee with reasonable [fol. 190] notice to the Shipowner; and the Shipowner, at its own cost, shall furnish such representative regular first class cabin accommodations and subsistence during such trip, including the time of the Vessel's stay in port or ports other than port of embarkation; and the Shipowner shall arrange that the Master of the Vessel will cooperate with such representative and render him all assistance in such inspection.

Section 10. The Shipowner will pay and discharge when due and payable from time to time, all taxes, assessments, Governmental charges, fines and penalties lawfully imposed on the Vessel.

Section 11. The Shipowner will not sell, mortgage, transfer, nor demise charter the Vessel without the written consent of the Mortgagee first had and obtained and any such written consent to any one sale, mortgage, transfer or charter shall not be construed to be a waiver of this provi-

sion in respect to any subsequent proposed sale, mortgage, transfer or charter. Any such sale, mortgage, transfer or charter of the Vessel shall be subject to the provisions of this Mortgage and the lien it creates.

Section 12. The Shipowner will comply with and satisfy all the provisions of the Ship Mortgage Act, 1920; as amended, in order to establish and maintain this mortgage as a first preferred mortgage upon the Vessel and upon all renewals, improvements and replacements made in or to the same.

Section 13. So long as this Mortgage or the notes secured hereby are outstanding, the Vessel shall remain documented under the laws of the United States.

Section 14. In the event that this Mortgage, the notes, or any provisions hereof or thereof shall be deemed invalid [fol. 191] dated in whole or in part by reason of any present or future law of the United States or any decision of any authoritative court; or if the documents at any time held by the Mortgagee be deemed by the Mortgagee for any reason insufficient to carry out the true intent and spirit of this Mortgage and said notes, then, from time to time the Shipowner will execute on its own behalf, such other and further assurances and documents as in the opinion of counsel for the Mortgagee may be required more effectually to subject the Vessel to the payment of the principal sum of the mortgage debt, together with interest thereon, as in said notes and as herein provided, and the performance of the terms and provisions of the notes and this Mortgage.

ARTICLE II

Section 1. In case any one or more of the following events, herein termed "Events of Default", shall happen; that is to say, in case

(a) default shall be made in the payment of the whole or any part of the interest on any of said notes when and as the same shall become due and payable as therein and herein provided and the same shall continue for fifteen (15) days; or

(b) default shall be made in the payment of the whole or any part of the principal of any said notes when the same shall become due and payable, whether at maturity, by notice of redemption, or otherwise; or

(c) default shall be made in the due and punctual observance and performance of any provision of Sections 3, 4, 5, 6, 7, 12, 13 or 14 of Article I hereof; or

[fol. 192] (d) the Shipowner shall demise charter, sell, mortgage or transfer said Vessel or shall attempt to demise charter, sell, mortgage or transfer said Vessel, without the written consent of the Mortgagee; or

(e) the Vessel shall be libelled or levied upon or taken by virtue of any attachment or execution or seized by any Governmental authority, and shall not be released from such libel, levy, attachment, execution or seizure within fifteen (15) days; or

(f) the Shipowner shall remove or attempt to remove said Vessel beyond the limits of the United States, save on voyages with the intention of returning to the United States, or shall abandon the Vessel in a foreign port; or

(g) the Shipowner shall be dissolved or adjudged a bankrupt or shall make a general assignment for the benefit of its creditors or shall lose its charter by forfeiture or otherwise, or a receiver or receivers of any kind whatsoever, whether appointed or not in Admiralty, Bankruptcy, Common Law or equity proceedings, and whether temporary or permanent, shall be appointed for the Vessel or for the property of the Shipowner; or a petition for reorganization of the Shipowner under the Bankruptcy Act shall be filed by the Shipowner, or such petition shall be filed by creditors and the same is approved by the Court; or if reorganization of the Shipowner under said Act is approved by the Court, whether proposed by a creditor, a stockholder or any other person whomsoever; or

(h) the Shipowner ceases to be a citizen of the United States as defined in Section 2 of the Shipping Act, 1916, as amended; or

[fol. 193] (i) default shall be made by the Shipowner in the prompt and faithful performance or observance of any other covenant, condition or agreement by it to be performed and observed, contained in said notes or in this Mortgage and such default shall continue for fifteen (15) days;

then and in each and every such case the Mortgagee thereupon may

(1) declare all the principal sum and the notes then outstanding, with the interest thereon, to be due and payable immediately, and upon such declaration the same with interest to date of declaration shall become and be immediately due and payable, and thereafter shall bear interest at the rate of six per centum (6%) per annum; provided, however, that if before any sale of any of the mortgaged property all defaults shall have been remedied and removed and full performance made by the Shipowner to the satisfaction of the Mortgagee and all installments of principal and interest in arrears (including interest at six per centum (6%) after declaration as aforesaid) and the reasonable charges and expenses of the Mortgagee, its agents and attorneys, shall have been paid, then and in every such case the Mortgagee shall waive any such default by written notice to that effect to the Shipowner; but no such waiver shall extend to nor affect any subsequent or other default nor impair any rights or remedies consequent thereon;

(2) bring suit at law, in equity or in admiralty, as it may be advised, to recover judgment for any and all amounts due under said notes, or any of them, or otherwise hereunder, and collect the same out of any and all property of the Shipowner whether covered by this Mortgage or otherwise:

[fol. 194] (3) retake the Vessel without legal process wherever the same may be; and the Shipowner or other person in possession forthwith upon demand of the Mortgagee shall surrender to the Mortgagee possession of the Vessel and the Mortgagee may hold, lay-up,

lease, charter, operate, or otherwise use the Vessel for such time and upon such terms as it may deem to be for its best advantage, accounting only for the net profits, if any, arising from such use of the Vessel and charging upon all receipts from the use of the Vessel or from the sale thereof by court proceedings or pursuant to Subsection (4) next following, all costs, expenses, charges, damages, or losses by reason of such use; and if at any time the Mortgagee shall avail itself of the right herein given it to retake the Vessel and shall retake it the Mortgagee shall have the right to dock the Vessel for a reasonable time at any dock, pier or other premises of the Shipowner without charge, or to dock it at any other place at the cost and expense of the Shipowner;

(4) (in addition to any and all other rights, powers, and remedies elsewhere in this Mortgage or by law granted to and conferred upon the Mortgagee) sell the Vessel upon such terms and conditions as to the Mortgagee shall seem best calculated to promote the objects of the Merchant Marine Act, 1936, as amended, including the right to sell and dispose of the Vessel, free from any claim of or by the Shipowner, at public sale, by sealed bids or otherwise, by first publishing notice of any such sale for ten (10) consecutive days, except Sundays, in some newspaper published in the City of New York, State of New York, and in some newspaper, if any, published at the place designated for such sale, and by mailing notice of such sale to the Shipowner at its last known address, and any such sale may be held [fol. 195] at such place and at such time as the Mortgagee in such notices may have specified, or may be adjourned by the Mortgagee from time to time by announcement at the time and place appointed for such sale or for such adjourned sale, and without further notice or publication the Mortgagee may make any such sale at the time and place to which the same shall be so adjourned; and any such sale may be conducted without bringing the Vessel to the place designated for such sale and in such manner as the Mortgagee may deem to be for its best advantage, and the Mortgagee may become the purchaser at any such sale, and shall

have the right to credit on the purchase price any or all sums of money due to the Mortgagee under the said notes, or otherwise hereunder.

The Shipowner does hereby irrevocably appoint the Mortgagee and its assigns the true and lawful attorney and attorneys of the Shipowner, in its name and stead to make all necessary transfers of the Vessel, and for that purpose it or they shall execute all necessary instruments of assignment and transfer, the Shipowner hereby ratifying and confirming all that its said attorney or attorneys shall lawfully do by virtue hereof. Nevertheless, the Shipowner shall, if so requested by the Mortgagee, ratify and confirm such sale by executing and delivering to the purchaser of the Vessel such proper bill of sale, conveyance, instrument of transfer and releases as may be designated in such request.

The Shipowner covenants and agrees that in addition to any and all other rights, powers, and remedies elsewhere in this Mortgage granted to and conferred upon the Mortgagee, the Mortgagee in any suit to enforce any of its rights, powers, or remedies, if an event of default has occurred and has not been cured, shall be [fol. 196] entitled as a matter of right and not as a matter of discretion (i) to the appointment of a receiver or receivers of the Vessel and that any receiver so appointed shall have full rights and powers to use and operate the Vessel, and (ii) to a decree ordering and directing the sale and disposal of said Vessel, and the Mortgagee may become the purchaser at said sale, and the Mortgagee shall have the right to credit on the purchase price any and all sums of money due to the Mortgagee under the said notes, or otherwise hereunder.

Section 2. In the event that the Vessel shall be arrested or detained by a Marshal or other Officer of any court of law, equity or admiralty jurisdiction in any country or nation of the world or by any Government or other authority and shall not be released from arrest or detention within fifteen (15) days from the date of arrest or detention, the Shipowner does hereby authorize and empower

the UNITED STATES MARITIME COMMISSION, or any public officer or officers who may by law succeed said Commission, in the name of the Shipowner, or its successors or assigns, to apply for and receive possession of and to take possession of the Vessel with all the rights and powers that the Shipowner, or its successors or assigns might have, possess and exercise in any such event; and this power of attorney shall be irrevocable and may be exercised not only by the officials hereinabove named but also by an appointee or appointees of such Commission with full power of substitution to the same extent as if the said appointee or appointees had been named as one of the attorneys above-named by express designation.

The Shipowner, also authorizes and empowers the UNITED STATES MARITIME COMMISSION or its ap-[fol. 197] pointees or any of them to appear in the name of the Shipowner, its successors and assigns, in any court of any country or nation of the world where a suit is pending against the Vessel because of or on account of any alleged lien against the Vessel from which the Vessel has not been released and to take such proceedings as to them or any of them may seem proper towards the defense of such suit and the discharge of such lien, and all expenditures made or incurred by them or any of them for the purpose of such defense or discharge shall be a debt due from the Shipowner, its successors and assigns, to the UNITED STATES OF AMERICA, and shall be secured by the lien of this Mortgage in like manner and extent as if the amount and description thereof were written herein.

Section 3. Each and every power and remedy herein specifically given to the Mortgagee or otherwise in this Mortgage shall be cumulative and shall be in addition to every other power and remedy herein specifically given or now or hereafter existing at law, in equity, admiralty or by statute, and each and every power and remedy whether specifically herein given or otherwise existing may be exercised from time to time and as often and in such order as may be deemed expedient by the Mortgagee, and the exercise or the beginning of the exercise of any power or remedy shall not be construed to be a waiver of the right to

exercise at the same time or thereafter any other power or remedy. No delay or omission by the Mortgagee or by any of the holders of the notes secured hereby in the exercise of any right or power or in the pursuance of any remedy accruing upon any default as above defined shall impair any such right, power or remedy or be construed to be a waiver of any such event of default or to be any acquiescence therein; nor shall the acceptance by the Mortgagee of any security or of any payment of or on account of any note [fol. 198] or notes maturing after any event of default or of any payment on account of any past default be construed to be a waiver of any right to take advantage of any future event of default or of any past event of default not completely cured thereby.

Section 4. In case the Mortgagee shall have proceeded to enforce any right, power or remedy under this Mortgage by foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Mortgagee, then and in every such case the Shipowner and the Mortgagee shall be restored to their former positions and rights hereunder with respect to the property subject or intended to be subject to this Mortgage, and all rights, remedies and powers of the Mortgagee shall continue as if no such proceedings had been taken.

Section 5. The proceeds of the sale of the Vessel and the net earnings from any management, charter, or other use of the same by the Mortgagee under any powers above specified, including the proceeds of any claims for damages on account of the Vessel, and of any insurance received by the Mortgagee for the account of the Vessel while exercising any such power shall be applied as follows:

First: To the payment of all expenses and charges including the expenses of any sale, the expenses of any retaking, attorneys' fees, court costs, and any other expenses or advances made or incurred by the Mortgagee in the protection of its rights or the pursuance of its remedies hereunder, and to provide adequate indemnity against liens claiming priority over or equality with this Mortgage;

Second: To the payment of all sums and notes secured hereby, and of all damages liquidated or otherwise, hereunder, together with interest thereon;

[fol. 199] *Third:* To the payment of any surplus thereafter remaining to the Shipowner or to whomsoever may be entitled thereto.

In the event that the proceeds are insufficient to pay the amounts specified in paragraphs "First" and "Second" above, the Mortgagee shall be entitled to collect the balance from the Shipowner, or any other person liable therefor.

Section 6. If the Shipowner shall make default in the observance or performance of any of the covenants, conditions or agreements in this Mortgage or its part to be performed or observed, the Mortgagee may in its discretion do all acts and make all expenditures necessary to remedy such default, including, without limitation of the foregoing, entry upon the Vessel to make repairs, and the Shipowner shall promptly reimburse the Mortgagee, with interest at the rate of six per centum (6%) per annum, for any and all expenditures so made or incurred and until the Shipowner has so reimbursed the Mortgagee for such expenditures the amount thereof shall be a debt due from the Shipowner to the Mortgagee and payment thereof shall be secured by the lien of this mortgage in like manner and extent as if the amount and description thereof were written herein; but the Mortgagee though privileged so to do shall be under no obligation to the Shipowner to make any such expenditures nor shall the making thereof relieve the Shipowner of any default in that respect. The Shipowner shall also reimburse the Mortgagee promptly with interest at the rate of six per centum (6%) per annum for any and all advances made or incurred by the Mortgagee at any time in retaking the Vessel or otherwise protecting its rights hereunder, and for any and all damages sustained by the Mortgagee from or by reason of any default or defaults of the Shipowner.

[fol. 200]

ARTICLE III

In case the Shipowner permits the Vessel by voluntary act or voluntary omission to become a Vessel not documented under the laws of the United States, the Shipowner shall pay to the Mortgagee an amount equal to the difference between the interest in fact paid or which may be payable on account of the Vessel, computed at the rate prescribed in this Mortgage, and the amount such interest would have been in the case of the Vessel if it had been computed at seven per centum (7%) per annum from the date of this Mortgage.

ARTICLE IV

Until some one or more of the events of default hereinbefore described shall happen, the Shipowner shall be suffered and permitted to retain actual possession and use of the Vessel.

ARTICLE V

Section 1. This Mortgage may be executed simultaneously in any number of counterparts and all such counterparts executed and delivered each as an original shall constitute but one and the same instrument.

Section 2. All the covenants, promises, stipulations and agreements of the Shipowner in this Mortgage contained shall bind the Shipowner and its successors and assigns and shall inure to the benefit of the Mortgagee and its assigns, and all the covenants, promises, stipulations and agreements of the Mortgagee shall bind the Mortgagee and its assigns and shall inure to the benefit of the Shipowner and its successors and assigns, whether so expressed or not.

Section 3. Wherever and whenever herein any right, power, or authority is granted or given to the UNITED STATES OF AMERICA, whether named as Mortgagee or [fol. 201] otherwise, such right, power, and authority may be exercised in all cases by the UNITED STATES MARITIME COMMISSION or such agent or agents as it may appoint, and the act or acts of such agent or agents when taken shall constitute the act of the Mortgagee hereunder.

ARTICLE VI

For purpose of endorsement of this Preferred Mortgage on the document of the Vessel as required by law (Section D of Ship Mortgage Act, 1920, as amended), the total amount is Two Million Two Hundred Eighty-seven Thousand Dollars (\$2,287,000.00) and interest and performance of mortgage covenants, the date of maturity is November 17, 1964, and the discharge amount is the same as the total amount.

IN WITNESS WHEREOF, the Shipowner has executed this Mortgage the day and year first above written.

WATERMAN STEAMSHIP CORPORATION

By: E. A. ROBERTS

President

(CORPORATE SEAL)

ATTEST:

J. A. TOWNSEND

Secretary

By: H. C. SLATON

Treasurer

APPROVED:

FRANCES B. GOERTNER

W. R. FITCH

Assistant General Counsel

U. S. Maritime Commission

[fol. 202]

ACKNOWLEDGMENT

STATE OF ALABAMA }
COUNTY OF MOBILE } SS:

I, Eunice Murray, a Notary Public in and for said county and state, do hereby certify that E. A. Roberts, whose name as President of the WATERMAN STEAMSHIP CORPORATION, a corporation duly organized and existing under

the laws of the State of Alabama, is signed to the foregoing Preferred Mortgage and who is known to me, acknowledged before me on this day that, being informed of the contents of the Preferred Mortgage, he as such officer and with full authority, executed the same voluntarily for and as the act of said Corporation.

Given under my hand this the 17th day of November, 1944.

EUNICE MURRAY
Notary Public

(SEAL)

My Commission Expires:
October 30, 1947.

AFFIDAVIT

STATE OF ALABAMA }
COUNTY OF MOBILE } SS:

E. A. Roberts being duly sworn, deposes and says that he is President of WATERMAN STEAMSHIP CORPO- [fol. 203] RATION, the corporation described in and which executed the above and foregoing mortgage; that said mortgage is made by said WATERMAN STEAMSHIP CORPORATION in good faith and without any design to hinder, delay or defraud any existing or future creditor of the said WATERMAN STEAMSHIP CORPORATION, or any lienor of the mortgaged vessel; and that this affidavit is made pursuant to an order of the Board of Directors of said WATERMAN STEAMSHIP CORPORATION.

E. A. ROBERTS

Subscribed and sworn to before me
this 17th day of November, 1944.

EUNICE MURRAY
Notary Public

(SEAL)

My Commission Expires October 30, 1947.

REGISTER NO. 10

OFFICIAL FILE	CHIEF OF POLICE CITY OF NEW YORK
100-100000	100-100000

Rebuilt at : _____

Number of Crew, excluding Master..... 10

Horsepower **6-900** **62.1** **1000**

Certificate of Registry

WEIGHT: Loaded 29.7 lbs.
L. S. 450 IWS Gals.
G. R. 20 100 Miles.

In Pursuance of Chapter One, Title XLVIII, "Regulation of Commerce and Navigation," Revised Statutes of the United States.

J. A. Townsend, of Northwest National Bank Building, Mobile, Alabama, as Secretary
having taken and subscribed the oath _____ required by law, and having sworn _____ that

SAFETY VALVE: CONCRETE
LINE: 1/2" DIAMETER: 1/2" DIAMETER
WELL: 1/2" DIAMETER
CONCRETE: 1/2" DIAMETER
IN A

_____ citizen of the United States and the sole owner of the vessel called the _____
EAST STAR of _____
 whereof **J. A. Townsend** is at present master, and is a citizen of the United States,
 and that the said vessel was built in the year 1 **1901** at **Chickasaw, Alabama**,
 of **which** _____ as appears by _____ the certificate of the said _____
Building Corporation, Chickasaw, Alabama, builders,
 and **Thomas H. Brown, Acting Agent** _____ having certified that
 the said vessel _____ **Steam Power** _____; that she has
 deck _____ mast _____ stem, and a _____ stern; that her
 register length is _____ feet, her register breadth _____ feet, her register depth _____ feet,
 her height _____ feet; that she measures as follows:

	TONS	PERCENT
Capacity under tonnage deck	0 00	00
Capacity between decks above tonnage deck	0 00	00
Capacity of enclosures on the upper deck, viz: Forecastle ; bridge ; poop ; break ; house ; chart ; radio ; access hatchways ; light and air ;	0 00	00
GROSS TONNAGE		
Deductions under Section 4153, Revised Statutes, as amended (Sec. 77, Title 46, U. S. C.):		
Crew space ; Master's cabin ;		
Steering gear ; Anchor gear ;		
Chart house ; Donkey engine and boiler ;		
Storage of sails ; Propelling power (actual space, ;		
TOTAL DEDUCTIONS		
NET TONNAGE		
<p>There have been omitted, viz: Forepeak ; bridge ; poop ; other spaces (upper and double bottoms) for water ballast ; coal ; forecastle ; open bridge ; open poop ; shelter deck ; cabins ; companion ; galley ; skylights ; water closets ; anchor ; condenser ; donkey engine and boiler ; steering gear ; light and air over propelling machinery ; other machinery spaces</p>		

and _____ having agreed to the description and measurement above specified, the vessel has been duly REGISTERED at this PORT;

Given under my hand and seal, at the PORT of Mobile, Alabama, this 17 day of November in the year one thousand nine hundred and forty-two 1942

JOHN H. H. LYONS, Collector.

[SEAL] (S) W. L. JOHNSON
Commissioner of Customs

[SEAL] By Edward T. Allen,
Collector of Customs

STIPULATION G

EXHIBIT 30

25, D.C.

November 9, 1944

Edouard F. Henriques, Esquire
Regional Attorney, Gulf Coast
United States Maritime Commission
348 Baronne Street
New Orleans 12, Louisiana

Dear Mr. Henriques:

Re: SS HASTINGS (246617)—Sale under Mortgage to
Waterman Steamship Corporation

I send you herewith bill of sale, in duplicate, one counterpart of preferred mortgage, and form of note for use in closing the sale of the SS HASTINGS under mortgage to Waterman Steamship Corporation. This sale is now scheduled for closing at Mobile, November 17, 1944.

At the request of the buyer, I have sent direct to Waterman Steamship Corporation, at Mobile, six counterparts of the preferred mortgage form and twenty notes. In this connection you and the buyer should make certain that inasmuch as the mortgage and notes are dated November 17 (at the buyer's express request), they should not be acknowledged prior to that date.

As stated on the first page of the mortgage, the purchase price of the SS HASTINGS to the buyer on November 17, 1944, is \$2,642,706.03, payable on or before the day of closing in the sum of \$355,706.03 and the balance as provided in [fol. 206] the mortgage and notes. As the buyer has already paid \$325,000, there should be collected by you on or before the day of closing only the sum of \$30,706.03, if the closing is effected November 17 as planned. Should the closing be delayed, however, there should be collected for each day of delay after November 17 the sum of \$177.58805.

[fol. 221]

April 18, 1949

Chief, Division of Accounts

Attention: Mr. C. W. Levis

Chief, Division of Claims

Waterman Steamship Corporation—Application No. 2109-D
for Adjustment for Prior Sales to Citizens under Section 9
of the Merchant Ship Sales Act of 1946.

This Division is presently engaged in reprocessing the
subject application for final adjustment of the prior sales
price of the following vessels:

SS FAIRISLE	MC Hull No. 850
SS FAIRLAND	" 472
SS RAPHAEL SEMMES	" 473
SS BIENVILLE	" 478
SS AZALEA CITY	" 477
SS WARRIOR	" 479
SS JEAN LAFITTE	" 480
SS AFOUNDRIA	" 482
SS WACOSTA	" 1602
SS YAKA	" 1605
SS HASTINGS	" 1606
SS MADAKET	" 1607
SS ANDREW JACKSON	" 1608
SS CITY OF ALMA	" 1609
SS KYSKA	" 1612
SS MAIDEN CREEK	" 1613
SS FAIRPORT	" 1614
SS JOHN B. WATERMAN	" 2826

[fol. 222] Since the information previously furnished to
the Division of Finance, Construction, with respect to
"Price and Payment" and which in turn was supplied to
the then Large Vessel Sales Division, in statement form,
the files of this Division do not contain the original data,
therefore, it is respectfully requested that this Division be
furnished with information as follows with respect to each
of the eighteen vessels listed above:

1. Cash paid on delivery
2. Interest paid in progress payments
3. Trade-in Allowance
4. Original mortgage
5. Total original purchase price
6. Adjustment to original purchase price under the terms of purchase contract (indicate whether by mortgage adjustment or cash)
7. Mortgage payments to 3-8-46
8. Mortgage balance at 3-8-46
9. Interest accrued as of 3-8-46
10. Date interest accrued as of 3-8-46 was paid

(sgd.) J. HOLLIS ORCUTT
J. Hollis Orcutt
Chief, Division of Claims

LEMadigan/mem

cc: Orcutt

Madigan—room 4803

Reading file, Division of Claims

Reading file, Bureau of Finance—4857

General files—2

It is my understanding that the vessel is to be requisitioned by the War Shipping Administration on a bareboat basis simultaneously with delivery to the buyer so that the buyer will not be required to place any insurance to meet the mortgage requirements.

Edouard F. Henriques, Esquire—11/9/44—2

As stated in the mortgage, the agreement for the sale of this vessel is dated as of August 14, 1944.

I am sending copies of this letter to the Collector of Customs and the buyer at Mobile, Alabama for their information.

Very truly yours,

FRANCIS B. GOERTNER
Assistant General Counsel

Enclosures

WRFitch/amb

cc: Waterman Steamship Corporation
Merchants National Bank Bldg.
Mobile, Alabama

Attn: Mr. H. C. Slaton, Vice President
Collector of Customs, Mobile, Alabama
Director of Insurance, Maritime

STIPULATION G

EXHIBIT 59

Contract No. WSA-8884

Form No. 103 (Rev.)

4/4/44

WARSHIPDEMISE (Rev.)

WAR SHIPPING ADMINISTRATION
REQUISITION BAREBOAT CHARTER
FOR DRY CARGO AND TANK VESSELS

WHEREAS, pursuant to Section 902 of the Merchant Marine Act, 1936 as amended, and the President's Executive Order No. 9054, as amended, the Administrator, War Shipping Administration, has requisitioned the use of the Vessel:

NOW, THEREFORE, pursuant to said Section 902, the Administrator, War Shipping Administration, hereby transmits to the Owner this Charter, consisting of Part I and Part II, setting forth the terms which, in the Administrator's judgment, should govern the relations between the Charterer and the Owner and a statement of the rate of hire which, in the Administrator's judgment, will be just compensation for the use of the Vessel under the terms of this Charter:

REQUISITION BAREBOAT CHARTER, dated as of November 17, 1944, between Waterman Steamship Corporation Address, Mobile, Alabama. OWNER of the SS HASTINGS (herein called the "Vessel"), and UNITED STATES OF AMERICA, acting by and through the [fol. 208] Administrator, War Shipping Administration, CHARTERER, the terms of the Charter being as follows:

PART I

The Vessel's particulars on which the rate of hire and valuation have been based, in part, by the Administrator are as follows:

DEADWEIGHT capacity, as defined in Clause 18, Part II.
 10,979 tons

CLASSED At American Bureau of Shipping

BALE CAPACITY of refrigerated cargo space, as represented by the Owner, exclusive of ship's stores and space installed by or at the expense of Charterer None cubic feet.

YEAR BUILT 1944.

CLAUSE A. PERIOD OF CHARTER: From the time of delivery to the time of expiration of the voyage current at the end of the emergency proclaimed by the President of the United States on May 27, 1941; provided, however, that either party may sooner terminate this Charter upon not less than thirty (30) days' written or telegraphic notice to the other. In either case the Vessel shall be redelivered as hereinafter provided.

CLAUSE B. HIRE: The Owner is hereby given an election either (I) to accept the rate of hire hereinafter set forth in Option I, which states the rate which in the Administrator's judgment will be just compensation for the use [fol. 209] of the Vessel under the terms of this Charter; or (II) to decline to accept such rate of hire and to have the amount of just compensation judicially determined. If the Owner elects Option I, hire at the rate therein stated shall be paid by the Charterer to the Owner in the manner provided in Part II. If the Owner does not accept the rate of hire set forth in Option I, the right of the Owner to pursue whatever legal remedy it may have to recover just compensation under the laws and Constitution of the United States shall not be impaired or prejudiced either by the execution and delivery of this Charter, or by the acceptance of 75 per centum of the rate of hire set forth in Option I, and this Charter, in any such event, shall then be deemed an agreement governing only the relations between the Owner and the Charterer in respect to matters other than the amount of just compensation for the use of the Vessel under the terms of this Charter. Where Option II applies

the Charterer reserves all rights which it may have to re-adjust or redetermine the rate of hire at any time after July 1, 1945. The right to modify or change the terms of the Charter is reserved where the Charter has not been executed by the Owner and delivered to the Charterer.

OPTION I—The hire shall be \$33,033.83 per calendar month or pro-rata for any portion thereof.

OPTION II—The Charterer shall pay to the Owner just compensation, to be judicially determined, for the use of the Vessel under the terms of this Charter, and, subject to the Charterer's reservations as to readjustment or re-determination of the rate of hire, the Charterer shall pay on account of just compensation a sum equal to 75 per centum of the hire otherwise payable under the terms of this Charter, as the same may from time to time be due under the terms of this Charter, and the Owner shall be [fol. 210] entitled to sue the United States to recover such further sum as added to such 75 per centum will make up such amount as will be just compensation. The term "just compensation" as used in this Clause B and elsewhere in this Charter shall be deemed to include interest, if any, to which the owner would be entitled if it had not executed and delivered this Charter.

TIME OF ELECTION BETWEEN OPTIONS—The Owner shall elect between Option I and Option II at the time the Owner signs this Charter, unless a rate has not then been inserted in Option I. In the latter case, such election shall be made by the Owner in writing within thirty (30) days after receipt of written notice from the Charterer of the rate to be so inserted. In the event of the Owner's failure to elect Option I at the time of signing, or within such 30-day period, as the case may be, Option II shall apply; provided, however, that at any time after election has been made of either Option I or Option II, but before redelivery and before commencement of suit for just compensation, the Owner, subject to the approval of the Charterer, may, if it has elected Option I herein, change such election to Option II, effective as of the date of such change and notice thereof to the Charterer, or if it has

elected Option II herein, change such election to Option I, effective as of the time of delivery under this Charter or such other mutually agreeable date as the Charterer may fix. Whenever Option II is applicable, it shall be deemed to have been elected for the purpose of this proviso.

RATE REVISION (Option I only)—At any time after July 1, 1945 but not more often than once every 12 months thereafter, either party may request a redetermination of the rate of charter hire upon ninety (90) days' written or [fol. 211] telegraphic notice to the other. If a revised rate is determined and agreed upon within such 90-day period, it shall become effective as of the date specified in the determination and shall continue for the balance of the period of this Charter, subject to further redetermination in accordance with the provisions of this paragraph. If a revised rate is not determined and agreed upon within any such 90-day period, then the rate of hire in effect at the time of such notice shall apply only until noon (EWT) of the day after the end of such 90-day period, and the Charterer shall make a redetermination of the rate of hire, as to which the provisions of Option II of this Clause B shall apply for the balance of the period of this Charter. A change in the rate of charter hire under this paragraph shall not terminate the period of or otherwise modify the provisions of this Charter, and any such change shall be without prejudice to the rights of either party to terminate this Charter as provided in Clause A, Part I.

CLAUSE C. VALUATION. The Owner shall elect between the following options, unless this is a Vessel subject to the provisions of Section 802 of the Merchant Marine Act 1936, as amended, in which event the Owner shall not have the right to elect Option I, and Option II shall apply.

OPTION I—In the event of loss or damage to the Vessel due to the operation of a risk assumed by the Charterer under the terms of this Charter, the Charterer shall pay to the Owner just compensation, to be judicially determined, for such loss or damage, to the extent the person entitled thereto is not reimbursed therefor through policies of insurance against such loss or damage. In such event the

amount of just compensation shall be determined and tendered by the Charterer as soon as practicable after the loss or damage, but if the amount of just compensation so determined is unsatisfactory to the person entitled thereto, [fol. 212] the Charterer shall pay to such person 75 per centum of the amount so determined, and such person shall be entitled to sue the United States to recover such further sum as, added to said 75 per centum, will make up such amount as will be just compensation for the loss of or damage to the Vessel.

OPTION II—For the period commencing with the delivery of the Vessel under this Charter and ending noon, (EWT) April 20, 1945, the agreed valuation of the Vessel for the purposes of this Charter and any insurance undertaken by the Charterer is the sum of \$..... For each subsequent twelve (12) month period the valuation, unless otherwise agreed, shall be reduced by, but any Owner who shall be dissatisfied with such reduction shall have the option, to be exercised on or before April 1st of any year commencing April 1st, 1945, to elect Option I for the period commencing at noon (EWT) of the following April 20th, and effective for the balance of the term of this Charter. In event of such election, the provisions of Option I shall control for all purposes from such effective date.

The foregoing provisions of this Option II shall not be applicable to a Vessel subject to the provisions of Section 802 of the Merchant Marine Act, 1936, as amended. For the purposes of this Charter and any insurance undertaken by the Charterer, any such Vessel shall be valued as of the date of loss at the actual depreciated construction cost of the Vessel (together with the actual depreciated cost of capital improvements thereon, but excluding the cost of national-defense features), less the depreciated amount of construction-differential subsidy theretofore paid incident to the construction or reconditioning of such Vessel, or the fair and reasonable scrap value of such Vessel as determined by the Charterer, whichever is greater. In computing the depreciated value of the Vessel, depreciation shall be computed on the Vessel on the schedule

adopted by the Bureau of Internal Revenue for income-tax purposes.

By mutual agreement the valuation provisions of this Option II may be superseded as of the date of loss or any other mutually agreeable date in the event that the Charterer shall adopt any plan with respect to replacement of vessels which is applicable to this Vessel.

TIME OF ELECTION BETWEEN OPTIONS—Except as otherwise provided in Valuation Option II above, the Owner shall elect between Option I and Option II at the time the Owner signs this Charter, unless a valuation has not then been inserted in Option II. In the latter case, such election shall be made by the Owner in writing within thirty (30) days after receipt of written notice from the Charterer of the valuation to be so inserted. In the event of the Owner's failure to elect Option II at the time of signing or within such 30-day period, as the case may be, Option I shall apply.

CLAUSE D. PORT OF DELIVERY: Mobile, Alabama.

CLAUSE E. TIME AND DATE OF DELIVERY: 2:10 P.M., CWT, November 17, 1944.

CLAUSE F. PORT OF REDELIVERY: Port of delivery, unless otherwise agreed; provided however, that at Owner's option, redelivery shall be made at the U.S. continental port where the Owner maintains its principal operating headquarters.

[fol. 214] **CLAUSE G. NOTICE OF REDELIVERY:** The Charterer shall give not less than thirty (30) days' written or telegraphic notice.

CLAUSE H. UNIFORM TERMS: This Charter consists of this Part I and Part II, conforming to the Requisition Bareboat Charter for Dry Cargo and Tank Vessels, published in the Federal Register of April 8, 1944. The provisions of Part II shall be incorporated by reference in and need not be attached to Part I of this Charter, and unless in this Part I otherwise expressly provided, all of the provisions of Part II shall be part of this Charter as though fully set forth in this Part I.

CLAUSE I. PRIOR CHARTER OR REQUISITION:

Execution and delivery of this Charter by the Owner shall not impair any rights or obligations of either the Charterer or the Owner existing at the time of delivery of the Vessel under this Charter and arising out of any prior Charter or out of any requisition of the Vessel other than the requisition pursuant to which this Charter is tendered, but with respect to any rights or obligations arising after delivery of the Vessel under this Charter, the terms of this Charter shall govern. The execution and delivery of this Charter shall be without prejudice to any rights which the Charterer may have to requisition the Vessel for title at any time or to requisition the Vessel for use upon termination of this Charter by the Owner. Whenever the Owner hereunder is entitled to just compensation as provided under Option II Clause B or Option I Clause C; or Clause 11 A, Part II, the rights of such Owner as to the determination and payment of just compensation under the laws and Constitution of the United States shall not be prejudiced by reason of the execution and delivery of this Charter by such Owner, and the rights of such Owner to just [fol. 215] compensation shall be the same as though he had not executed and delivered this Charter, provided, however, that all terms and conditions of this Charter other than those relating to the determination and payment of just compensation shall not be impaired or affected by the reservation contained in this sentence.

CLAUSE J. SPECIAL PROVISIONS: 1. The First paragraph of Option II of Clause C, Part I is hereby deleted and the following paragraph is inserted in lieu thereof:

Option II—For the period ending noon EWT, April 20, 1945, the agreed valuation of the Vessel for the purposes of this Charter and the insurance provided by the Charterer, is the sum of \$2,642,706.03. For the twelve (12) month period ending noon EWT, April 20, 1946, the valuation, unless otherwise agreed, shall be reduced by 2.11% of the construction cost. For each subsequent twelve (12) month period the valuation, unless otherwise agreed, shall

be reduced by 5% of the construction cost, but any Owner who shall be dissatisfied with such reductions shall have the option, to be exercised on or before April 1, 1945 or on or before April 1st, of any year thereafter, to elect Option I for the period commencing at Noon EWT, of the following April 20th, and effective for the balance of the term of this Charter. In event of such election, the provisions of Option I shall control for all purposes from such effective date.

2. The value and charter hire payable under the terms of this Charter are, as required by General Order 37, based in part upon the construction cost of the Vessel. Such construction cost has not, as of the date of the execution of this Charter, been audited by the United States Maritime [fol. 216] Commission and, therefore, it is agreed that the value and charter hire herein provided and any payments made hereunder are subject to adjustment to conform with the rate and value payable hereunder as finally determined after audit of the construction cost of the Vessel by the United States Maritime Commission.

IN WITNESS WHEREOF, the Owner has executed this Charter in quadruplicate the 19 day of December, 1944, and has elected Hire Option one and Valuation Option two, and the Charterer has executed this Charter in quadruplicate the day of Jan. 1, 45.

WATERMAN STEAMSHIP CORPORATION

Original signed by:

By: W. B. GARNER
W. B. GARNER, Executive Vice-President
UNITED STATES OF AMERICA

By: E. S. LAND, ADMINISTRATOR
WAR SHIPPING ADMINISTRATION

Original signed by:

By: ROSS LANGDON
For the Administrator

As to execution for OWNER

ATTEST:

Original signed by:

J. A. TOWNSEND

or if not incorporated

J. A. TOWNSEND, SECRETARY

[fol. 217] In the presence of:

witness

and

witness

Approved as to form:

Original signed by:

R. F. DONAGHUE

For FRANK J. ZITO

Assistant General Counsel

I, J. A. Townsend, certify that I am the duly chosen, qualified, and acting Secretary of Waterman Steamship Corporation a corporation organized and existing under the laws of the State of Alabama and having its principal place of business at Mobile, Alabama, a party to this Charter, and, as such, I am the custodian of its official records and the minute books of its governing body; that W. B. Garner, who signed this Charter on behalf of said corporation, was then the duly qualified Executive Vice-President of said corporation; that said officer affixed his manual signature to said Charter in his official capacity as said officer for and on behalf of said corporation by authority and direction of its governing body duly made and taken;

that said Charter is within the scope of the corporate and lawful powers of this corporation.

Original signed by:

J. A. TOWNSEND

Secretary

J. A. Townsend

(CORPORATE SEAL)

[fol. 218]

DEFENDANT'S EXHIBIT 1

2-28-61 R. G.

20040

UNITED STATES OF AMERICA

Department of Commerce

MARITIME ADMINISTRATION

Washington, February 21, 1961

I HEREBY CERTIFY that the annexed photostats are true copies of memorandum dated May 18, 1949, from Chief, Division of accounts to chief, Division of Claims, Subject: Waterman Steamship Corporation—Application No. 2109-D for Adjustment for Prior Sales to Citizens under Section 9 of the Merchant Ship Sales Act of 1946, and attachments thereto, as they appear on file in the Maritime Administration, U.S. Department of Commerce.

IN WITNESS WHEREOF, I have hereunto set my hand, and caused the seal of the Maritime Administration to be affixed, on the day and year first above written.

THOMAS LISI

Secretary

Maritime Administration

162

[fol. 219]

Office Memorandum UNITED STATES GOVERNMENT

DATE: May 18, 1949

TO: Chief, Division of Claims

FROM: Chief, Division of Accounts

SUBJECT: Waterman Steamship Corporation—Application No. 21009-D for Adjustment for Prior Sales to Citizens under Section 9 of the Merchant Ship Sales Act of 1946.

Reference is made to your memorandum of April 18, 1949, in which you requested price and payment data on sixteen vessels purchased by the Waterman Steamship Corporation.

Attached is a statement embodying requested information on these vessels.

C. T. CRAWFORD

For T. H. REAVIS

Chief, Division of Accounts

Attachments

Received May 24, 1949,

Bureau of Finance

UNITED STATES MARITIME COMMISSION

WATSMAN STEAMSHIP CORPORATION

PRICE AND PAYMENT DATA AS AT MARCH 5, 1946

PREPARED MAY 11, 1949

IN CONNECTION WITH SERVICE 5 AUTHORIZED BY REGIMENTARY SALES ACT OF 1946

MC Bill No.	Name of Vessel	Delivery Date	Cash Paid On Delivery	Interest Paid On Progress Payments	Trade-in Allowance	Original Mortgage	Total Purchase Price	Payments On Mortgage To 3/5/46	Balance Of Mortgage Due 3/5/46	Accrued Interest Of 3/5/46	Date Accrued Interest Was Paid	Balance Of Mortgage As Of 3/5/46
850	PAIRCHILD	1-31-42	\$ 600,000.00	\$ 23,895.28	0 - 0	\$ 2,460,000.00	\$ 3,000,000.00	\$1,572,374.76	\$ 427,521.24	\$ 2,856.99	7-26-46	0 - 0
472	PAIRCHILD	8-31-42	600,000.00	25,560.11	0 - 0	2,460,000.00	3,000,000.00	1,547,381.64	842,618.36	723.10	8-24-46	0 - 0
473	RAFAELI SHAKES	10-30-42	600,000.00	45,254.66	0 - 0	2,460,000.00	3,000,000.00	1,462,734.14	937,265.86	11,646.34	1-25-46	0 - 0
476	BIRNFIELD	5-31-43	594,873.83	29,646.97	0 - 0	2,376,286.00	2,976,353.83	966,800.00	1,416,553.83	13,349.35	7-24-46	0 - 0
477	ALABAMA CITY	7-2-43	600,895.75	61,764.69	0 - 0	2,339,000.00	2,939,895.75	966,374.34	1,373,521.41	18,951.66	7-21-46	0 - 0
479	VARICOR	7-26-43	159,675.41	40,932.11	560,000.00	2,294,460.00	2,924,135.41	223,686.80	2,497,448.61	8,469.64	7-22-46	647,346.34
489	JAN LAPITE	9-10-43	124.56	43,979.79	(1)676,800.00	2,132,880.00	2,764,344.71	231,388.80	1,315,580.80	33,131.04	3-2-46	647,346.34
482	APPOHOTA	11-11-43	643.77	46,655.42	(2)686,900.00	2,011,230.00	2,652,184.15	241,122.00	1,410,056.00	28,428.52	3-2-46	647,346.34
1602	MAONSTA	4-6-44	0 - 0	8,551.82	(3)665,700.00	1,972,780.00	2,631,617.55	197,770.00	1,775,430.00	27,449.72	5-7-46	647,346.34
1605	YAMA	5-22-44	325,000.00	25,402.31	0 - 0	2,560,780.00	2,985,780.00	374,184.16	1,886,375.84	34,640.75	5-21-46	283,379.63
1606	RAFFERS	11-17-44	325,000.00	30,706.63	0 - 0	2,560,780.00	2,985,780.00	374,184.16	1,912,875.84	29,254.83	7-18-46	283,379.63
1607	MAHNET	1-19-45	325,000.00	33,046.21	0 - 0	2,560,780.00	2,985,780.00	374,184.16	1,948,875.84	8,660.68	7-18-46	342,171.82
1608	ATHELY JATCHE	3-23-45	325,000.00	35,794.97	0 - 0	2,560,780.00	2,985,780.00	374,184.16	1,959,275.84	31,466.99	3-22-46	312,142.12
1609	CITY OF ANNA	5-4-46	325,000.00	40,953.54	0 - 0	2,560,780.00	2,985,780.00	374,184.16	1,987,275.84	22,704.80	5-3-46	314,784.9
1612	STELA	11-9-46	244,778.18	55,669.41	0 - 0	2,317,308.00	2,562,460.00	324,051.18	1,899,408.82	29,296.63	5-4-46	647,346.34
1613	MAINES CREEK	1-5-46	244,376.66	62,781.47	0 - 0	2,315,000.00	2,559,376.66	325,535.47	1,779,467.53	18,576.92	7-4-46	416,721.19
1614	PAIRPORT	2-27-46	235,594.34	66,669.44	0 - 0	2,315,000.00	2,559,376.66	0 - 0	2,145,000.00	1,894.13	8-26-46	647,346.34
2826	JOHN B. WATSMAN	8-11-46	331,150.00	17,986.61	0 - 0	2,437,850.00	2,479,750.00	0 - 0	0 - 0	0 - 0	0 - 0	647,346.34
TOTALS			\$1,841,500.56	\$705,321.54	\$2,609,600.00	\$40,524,060.00	\$46,875,138.05	\$9,765,370.29	\$35,259,520.41	\$875,000.00		\$6,111,172.6

- (1) \$43,979.79 of trade-in allowance applied to interest on progress payments
 (2) \$6,699.42 of trade-in allowance applied to interest on progress payments
 (3) \$ 8,551.82 of trade-in allowance applied to interest on progress payments
 S/S JOHN B. WATSMAN was delivered after 3/6/46

* Please Refer

Item 647,346.34

647,346.34 - Paid - 6/1/46
 36,211.71 - Paid - 6/1/46

J.G. 36-211-71

166

[fol. 223]

DEFENDANT'S EXHIBIT 2

2-28-61 R.G.

20040

UNITED STATES OF AMERICA

Department of Commerce

MARITIME ADMINISTRATION

Washington, February 24, 1961

I HEREBY CERTIFY that the annexed photostat is a true copy of memorandum dated August 8, 1945, from Chief Examiner to United States Maritime Commission, Subject: WATERMAN STEAMSHIP CORPORATION—Application Under Section 509 for Aid in the Construction of Three New Vessels—on file in the Maritime Administration, U.S. Department of Commerce.

IN WITNESS WHEREOF, I have hereunto set my hand, and caused the seal of the Maritime Administration to be affixed, on the day and year first above written.

! ! ! ! !

Assistant Secretary
Maritime Administration

(SEAL)

[fol. 224]

Office Memorandum UNITED STATES GOVERNMENT

UNITED STATES MARITIME COMMISSION

DATE: August 18, 1945

TO: United States Maritime Commission

FROM: Chief Examiner

SUBJECT: WATERMAN STEAMSHIP CORPORATION—Application Under Section 509 for Aid in the Construction of Three New Vessels

THE APPLICATION

The subject application is for aid under Section 509, Merchant Marine Act, 1936, in the construction of the last three of the Modified C2 type vessels now being built for the Commission by Gulf shipbuilding Corporation, a wholly-owned subsidiary of the Applicant. The vessels have been named KYSKA (Hull MC 1612), MAIDEN CREEK (Hull MC 1613) and FAIRPORT (Hull MC 1614) and are now scheduled for delivery between October 26 and December 14, 1945.

Applicant will pay the whole cost of the vessels, estimated at \$2,600,000 each, exclusive of the cost of national defense features, with a down-payment of 12½% and notes for the balance secured by preferred mortgages on the vessels and payable in 20 equal annual instalments.

With respect to the employment of the vessels, Applicant states that the particular service in which they may be [fol. 225] operated cannot be determined at this time on account of the war, but since the design of the vessels is the result of studies by its Operating, Traffic and Stevedoring Departments, it is believed that they will prove to be economical and efficient units in any deep sea service.

* * * *

RECOMMENDATION

It is recommended that the following action be taken on the application of Waterman Steamship Corporation under Section 509, Merchant Marine Act, 1936, as amended, for aid in the construction of the three vessels now under construction by Gulf Shipbuilding Corporation, named KYSKA, MAIDEN CREEK and FAIRPORT, designated as Hulls MC 1612, 1613 and 1614, respectively, for operation in the foreign or domestic trade:

I. Make the following findings and determinations:

- (a) That Waterman Steamship Corporation possesses the ability, experience, financial resources and other qualifications necessary to enable it to operate and maintain said vessels in the foreign or domestic commerce of the United States; and
- (b) That the granting of the aid applied for is calculated to carry out effectively the purposes and policy of the Merchant Marine Act, 1936, as amended.

II. Approve said application and authorize the sale of the vessels to Waterman Steamship Corporation under the provisions of Section 509 of the Act upon the following terms and conditions:

- [fol. 226] (a) Each vessel shall be sold at its full cost to the Commission less the cost of national defense features;
- (b) Applicant shall pay in cash on account of the purchase price of each vessel $12\frac{1}{2}\%$ of such price;
- (c) For the balance of the purchase price of each vessel Applicant shall give its promissory notes secured by a preferred mortgage on the vessel, payable in 20 equal annual instalments, with interest at the rate of $3\frac{1}{2}\%$ per annum, payable semi-annually; and

- (d) Applicant shall be given the benefit of future legislation that may be enacted permitting the adjustment of the purchase price of vessels sold by the Government prior to the date of the enactment thereof to the extent that such legislation may permit such adjustment as to said Hulls MC 1612, 1613 and 1614.

- III. Direct the General Counsel to have prepared and executed all agreements and other papers that he deems necessary or appropriate to carry out the above authorizations on behalf of the Commission.

JOHN J. MILLER

John J. Miller
Chief Examiner

Approved by the Commission

Date 8-14-45

? ? ? ? ?

Secretary

No legal objection

? ? ? ? ?

General Counsel

Attachments

[fol. 247]

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
Civil Action No. 2284

WATERMAN STEAMSHIP CORPORATION, Plaintiff,

v.

UNITED STATES OF AMERICA, Defendant.

OPINION WITH FINDINGS OF FACT AND
CONCLUSIONS OF LAW—April 2, 1962

This action arises under the provisions of Sections 1346 (a) (1) and 1402, of Title 28, of the United States Code.

Plaintiff is seeking recovery for alleged overpayment of federal income taxes for the years 1947 through 1950, in an amount of \$2,811,773.29. There are five major issues raised by the plaintiff's four claims, and one major issue raised by the Government's counter-claim. Each of these issues will be discussed separately in this opinion.

This opinion does not attempt to set forth the final sum to which the parties are entitled in the various issues. Such sums are to be determined by the parties in accordance with regular accounting procedures, reflecting the views herein expressed.

[fol. 271]

V.

SECTION 9 DEPRECIATION

This issue raises the question as to what are the proper bases for purposes of computing depreciation during the years 1947 through 1950, under Section 113 of the Internal Revenue Code, on eighteen vessels purchased by the plaintiff prior to 1946, the purchase price of which was subsequently adjusted under the Merchant Ship Sales Act of 1946.

At various times during the years 1942 through 1946, plaintiff purchased eighteen C-2 cargo vessels from the United States Maritime Commission (hereinafter referred to as Maritime), pursuant to Section 509 of the Merchant Marine Act 1936, 49 Stat. 2000, 46 U.S.C., 1952 Ed., Sec. 1159. The total purchase price of the vessels was stipulated [fol. 272] to be \$49,582,767.02. Of this amount \$6,449,107.02 was paid in cash, \$2,609,600.00 was paid through a trade-in allowance on four vessels, and the remaining sum of \$40,524,060.00 was secured by mortgages on the vessels. From the dates the vessels were purchased through March 7, 1946, plaintiff made cash payments totaling \$9,786,339.19 in reduction of the mortgage indebtedness, leaving a balance due on the mortgage as of March 8, 1946, of \$30,737,720.81.

As of March 7, 1946, the bases of the eighteen vessels as claimed by the plaintiff and approved by the Internal Revenue Service totaled \$47,149,043.42. These bases were agreed upon as a result of adjustments in the total purchase price to account for unrecognized gain on the four vessels traded in.

On March 8, 1946, Congress enacted the Merchant Ship Sales Act of 1946, 60 Stat. 41, 50 U.S.C. Appendix 1952 Ed., Secs. 1735-1746, (hereinafter referred to as the Act). Under Section 4, citizens of the United States were given the right to purchase from Maritime war-built vessels at the statutory sales price defined in Section (3) (d). Section 9 of the Act authorizes adjustments in purchase prices upon application to Maritime, of certain vessels sold by Maritime to citizens of the United States prior to March 8, 1946. The purpose of this section was to allow a fair adjustment in the cost of ships purchased during the inflationary war period with the cost of ships purchased under the Act. This adjustment of purchase price was to be accomplished according to the entire formula set forth in Section 9.

Plaintiff filed an application with Maritime for an adjustment in the purchase price of each of the eighteen vessels under Section 9 of the Act, and said application was approved.

[fol. 273] On June 11, 1951, plaintiff and Maritime entered into a final agreement for a final adjustment in the price of the eighteen vessels, pursuant to Section 9 of the Act. As a result of these adjustments plaintiff's mortgage indebtedness was reduced as of March 8, 1946, by \$20,468,904.07 from \$30,737,720.81 to \$10,268,816.74. The final agreement called for plaintiff to make a cash payment of \$86,037.70 as of March 8, 1946, in further reduction of the mortgage indebtedness. This cash payment was exclusive of and in addition to any benefit to plaintiff under Section 9. Adding this sum to the Section 9 adjustments leaves a total of \$10,182,779.04 as the amount to which the original indebtedness was reduced as of March 8, 1946.

Plaintiff contends that pursuant to the provisions of Section 9 of the Act, the price of the eighteen vessels was adjusted and reduced by \$20,468,904.07, and that the cost, and therefore the basis of these vessels as of March 8, 1946 was \$26,680,139.35, and that such sum should be used for depreciation purposes. This latter figure represents the difference between the bases agreed upon by plaintiff and the Internal Revenue Service as of March 7, 1946, *supra*, and the reduction in purchase price effected as of March 8, 1946, by the agreement with Maritime on June 11, 1951.

Defendant contends that pursuant to the provisions of Section 9 of the Act, the price of the eighteen vessels was adjusted and reduced to \$17,997,981.84, *their statutory sales price* and the price plaintiff would have had to pay for the vessels if they had been sold by Maritime to plaintiff on March 8, 1946, and not before that date.

The more than eight and a half million dollar difference between the bases as proposed by plaintiff and as proposed [fol. 274] by the defendant Government, equals the net charter hire credits to Maritime under Section 9(b)(6), as computed under defendant's contended interpretation of Section 9(b)(6). The defendant argues that this amount is not really a part of the cost of the vessels, and should therefore be deducted from the computed sum. This same argument was raised in *Barber Oil Corp. v. Manning*, 135 F. Supp. 451, and there decided in the taxpayer's favor.

The defendant sets forth several different methods of adjusting the figures to arrive at its alleged basis. But per-

meaning this issue is a single inquiry: For purposes of computing depreciation under Section 113 of the Internal Revenue Code, are the proper bases the statutory sales prices, as defined in Section 3(d), or the actual economic investment and cost after making the adjustment pursuant to Section 9(b)?

It seems to me that the Internal Revenue Service is attempting to create confusion in an area where Congress has been most explicit in setting forth the statutory procedure. The courts have spoken on this precise question in at least four cases, each one of which held adverse to the same contention now raised by the Government. *Barber Oil Corp.*, supra; *Socony Mobil Oil Company v. United States, Texaco, Inc. v. United States*, and *Mississippi Shipping Company, Inc. v. United States*, 287 F. 2d 910 (rehearing denied, 289 F. 2d, 326).

Section 9 of the Act is not a tax statute and it does not purport to provide the tax bases of vessels whose purchase prices have been adjusted thereunder. The tax bases of the eighteen vessels must be determined under the Internal Revenue Code. Sections 23 (n) and 114 (a) thereof provide for the allowance of depreciation computed on the basis of [fol. 275] the property as determined under Section 113. Section 113 (a) sets forth the general rule applicable to the present case as follows: "The basis of property shall be the cost of such property . . ."

Defendant insists that it was the intention of Congress that the price effected by the adjustment be equal to the statutory sales price. This contention was well considered in *Socony Mobil Oil Co. v. United States*, supra, and there the Court of Claims, speaking through Judge Madden, made this comment:

"Neither the express terms of the statute, those terms in their context, nor the relevant legislative history indicate a legislative intent that the basis for depreciation of the ships should be an artificial, legally constructed figure different from their actual mathematically computed cost." (At 914)

It seems improbable that if Congress had intended the Section 9 adjustments to equal the statutory sales price,

it would have omitted a reference in Section 9 to Section 3(d), which defines the statutory sales price. Indeed, the legislative history as discussed in *Socony Mobil Oil* indicates that this idea was considered by the drafters of the statute but dropped from the law as it now stands. The omission from the bill, as enacted, of a proposed Section 9(e)(1), which would have established the statutory sales price as the basis for tax purposes, clearly negates defendant's arguments.

I agree with plaintiff that the cost basis in the instant case can best be determined by comparing the economic [fol. 276] cost of the vessels to the plaintiff the moment before and the moment after the Act became effective. The parties have stipulated that plaintiff's economic investment in the vessels as of March 7, 1946, was \$47,149,043.42. The parties also stipulated that as a result of section 9 adjustments the original mortgage indebtedness was reduced \$20,468,904.07. This latter sum, plus a cash payment of \$86,037.70 as of March 8, 1946, left an outstanding mortgage indebtedness of \$10,182,779.04 on March 8, 1946.

The court finds the plaintiff's economic investment in these vessels, and consequently its cost basis of the vessels as of March 8, 1946, to be \$26,680,139.35, computed as follows:

Outstanding Mortgage Indebtedness	\$10,182,779.04
Cash Payment on March 8, 1946	86,037.70
Adjusted Bases of Vessels Traded In	175,876.40
Total Cash Paid up to March 7, 1946	16,235,446.21
<hr/>	
Total economic cost to plaintiff	\$26,680,139.35

On September 28, 1948, plaintiff sold one of the vessels ("WARRIOR") which was purchased prior to 1946, and the basis of which, for depreciation, is involved in issue here. The court finds that the sum of \$26,680,139.35 is to be used by plaintiff in computing its depreciation deduction for 1947 and that part of 1948 prior to the sale of the Warrior, and that the sum of \$25,902,565.91 is to be used by plaintiff in computing its depreciation deduction for

that portion of tax year 1948 after the sale of the Warrior and for tax years 1949 and 1950.

[fol. 277]

VI.

GOVERNMENT'S COUNTERCLAIM

The counterclaim of the Government alleges that certain adjustments in the purchase price of the eighteen vessels, discussed in Issue V, were improperly made.

To better understood the nature of this issue it is necessary to describe the manner in which the construction and sale of these vessels was to be accomplished. Under authority given to it in Sections 501, 502 and 509 of the Merchant Marine Act of 1936 (46 U.S.C. 1151, 1152 and 1159) the Maritime Commission, acting for the Government, would enter into a contract with a ship-builder to construct a vessel or vessels. Pursuant to the contract, the Government would make progress payments periodically during the construction process, which payments were applied toward the cost of the vessel to the Government. Concurrent with entering into such contract, the Government was authorized to enter into a contract for the sale of the vessels to approved applicants, plaintiff being one of such.

Section 502 (c), (46 U.S.C. 1152 (c)) required the applicant (plaintiff), as part of the contract of purchase, to make certain cash payments at the time progress payments were made and to pay interest at the rate of $3\frac{1}{2}\%$ per annum on that portion of the construction progress payments paid by the Government to the ship builder which were chargeable to the applicant and which were not reimbursed to the Government at the time of payment. If the Government was immediately reimbursed by the plaintiff for progress payments paid, no interest would accrue. The ultimate price paid for the vessel by the applicant is therefore partially dependent on when such progress payments were paid. Thus it is seen that the Merchant Marine Act of 1936 has to do with *the construction and sale of vessels*.

The Merchant Ship Sales Act, 1946, provides for certain *adjustments to be made in the purchase price of vessels*

purchased from the Government before 1946. Section 9 (b)(1) states in part that "the Commission shall credit the applicant with the excess of the cash payments made upon the original purchase price of the vessel . . ."

The first question to be decided is whether the phrase "original purchase price" as used in Section 9(b)(1) includes the statutory interest on progress payments paid by plaintiff to the Government.

The Government argues that the interest by its nature was the price paid the Government for the use of the money which it advanced to the shipbuilder to cover that portion of the progress payments on the vessels which were payable by plaintiff but loaned to plaintiff by the Government, and consequently not part of "original purchase price". With this I do not agree.

It is without question that up to the time of this lawsuit both of these parties considered the interest on progress payments to be a part of the original purchase price of the vessels. Each of the purchase contracts provides for and defines the purchase price of the vessels in a separate article which article includes such interest as part of its definition. In addition, the contracts contain a provision that the determination by the Commission of the purchase price shall be final and conclusive on the parties. The vessel mortgages given by plaintiff recite as consideration for the sale of the vessel a sum which includes interest on progress payments. [fol. 279] Correspondence between Government agencies referred to the purchase price as stated in the mortgage. The final agreement (discussed in the Section 9 depreciation issue *supra*) entered into between maritime and plaintiff states that the total purchase price of the vessels was \$49,582,767.02, which sum includes total interest on progress payments of \$705,321.54. Moreover, it appears that the Internal Revenue Service considered the interest on progress payments to be part of the purchase price of the vessels for tax purposes prior to the adjustments here in question. Finally, the evidence shows that of the 264 vessels sold prior to March 8, 1946, which were eligible for adjustment under Section 9, Maritime treated interest on progress payments as part of the original purchase price on all such vessels.

It is the contention of the defendant, in Paragraph 54(a) of its Counterclaim, that in determining the amount of the adjustment in the purchase price of the eighteen vessels under Section 9 of the Act, Maritime erroneously determined the amount of the cash payments made upon the original purchase prices of the vessels for the purpose of computing the credit to the plaintiff pursuant to Section 9(b)(1). Defendant insists that the determination by Maritime of the cash payments made upon original purchase prices was in violation of the statutory pricing formula, and therefore without authority of law. When the United States enters into a contract with a private firm or individual, the rights and duties of the parties are governed by the law applicable to contracts between private firms and individuals. The Government, however, contends that this is not the case here, as the matter comes under the exception to the above rule, namely, that the United States is not bound by the provisions of a contract entered into by an officer or agency of the Government where such officer or [fol. 280] agency enters into the contract pursuant to a specific statute, and the provisions of such contract violate such statute.

Section 9 of the Act does not define the term "cash payments paid upon the original purchase price of the vessel". Section 9 simply provides that the amount of such "cash payments paid upon the original purchase price of the vessel" be used in computing certain credits in the statutory price adjustment formula. Plaintiff purchase the vessels from the Government under Section 509 of the Merchant Marine Act of 1936 (46 U.S.C. 1159) and pursuant to purchasing contracts between the plaintiff and the Government. The purchasing contracts provide that the purchase price of each vessel includes interest on progress payments. They further provide that the determination by the Commission of the purchase price shall be final and conclusive on the parties. Section 9 of the 1946 Act does not provide for the sale or purchase of vessels, but simply for an adjustment in the purchase price of certain vessels purchased prior to the date of the Act. Consequently, the final agreement pursuant to Section 9 is not a contract of sale or purchase. It simply establishes, by the application of a prescribed

formula, the amount of the adjustment to be made in the original purchase price of the vessels. The original purchase price was agreed to and established by the original purchase contracts. The final agreement supersedes the purchase contract only to the extent that the original purchase prices of the vessels are adjusted in the final agreement. The final agreement is simply a fulfillment of the existing contractual relations under the purchase contracts.

There is no contention made by the Government that the purchase contracts were in violation of Section 509 of the Merchant Marine Act of 1936, pursuant to which they were [fol. 281] made. The purchase contracts and the final agreement having violated neither act, this litigation is taken out of the exception and the contract is made binding upon both parties. It seems to me that the matter comes squarely under the case of *Lynch v. United States*, 292 U.S. 571, in which Mr. Justice Brandeis states:

"The Fifth Amendment commands that property be not taken without making just compensation. Valid contracts are property, whether the obligor be a private individual, a municipality, a State or the United States. Rights against the United States arising out of a contract with it are protected by the Fifth Amendment. *United States v. Central Pacific R. Co.*, 118 U.S. 235, 238, 6 S. Ct. 1038, 30 L.Ed. 173; *United States v. Northern Pacific Ry. Co.*, 256 U.S. 51, 64, 67, 41 S. Ct. 439, 65 L.Ed. 825. When the United States enters into contract relations, its rights and duties therein are governed generally by the law applicable to contracts between private individuals . . . Punctilious fulfillment of contractual obligations is essential to the maintenance of the credit of the public as well as private debtors . . ." (At 579-580)

Defendant says that regardless of the answer to the preceding question (meaning of "original purchase price"), Maritime was unauthorized by the 1946 Act to credit plaintiff with interest on interest paid on the progress payments. Section 9(b)(5) requires only that in computing the amount to be credited, the date of delivery is to be taken as the time

when interest begins to accrue. That section does not prohibit interest credits on payments made prior to delivery. Since such payments were on a part of the original purchase price, the credits were properly included in the computations.

[fol. 282]. The next contention made by the Government in its counterclaim is that the application of the excess credits due plaintiff under Section 9(b)(8) of the Act against the mortgage indebtedness of plaintiff to Government, rather than a payment in cash to plaintiff in such amount, and the retroactive application of such credit in reduction of plaintiff's mortgage indebtedness from June 11, 1951, the date of the final agreement, to March 8, 1946, the effective date of the Act, deprived the Government of the interest due it on the amount of such reduction in mortgage indebtedness during such period, which was contrary to and not intended by the Act. This raises two questions: Did the Act require a cash payment for such excess credits or did it allow a reduction in any mortgage indebtedness in the amount of such credits? If the latter, was the retroactive application of such credits to a reduction of plaintiff's mortgage indebtedness to Government contrary to the Act?

Section 9(b)(8), (50 U.S.C. Sec. 1742(b)(8), 1952 Ed.), provides in part:

"If, after making such subtractions, the sum of the credits in favor of the applicant exceeds the sum of the credits in favor of the Commission, such excess shall be paid by the Commission to the applicant . . . Upon such payment by the Commission . . . , such overpayment shall be treated as having been refunded"

I find nothing in this section which requires a cash payment and this was the administrative interpretation of the agency charged with administration of the Act. (Hearings Before the Sub-Committee of the Committee on Appropriations, House of Representatives, 80th Congress, 1st Session, on the Independent Offices Appropriation Bill for [fol. 283] 1948, Part 2, printed in 1947 by the United States Government Printing Office for the use of the Committee

on Appropriations, page 775, et seq.). However, the entire matter was put at rest by the provisions of the Independent Offices Appropriation Act, 1948, 61 Stat. 585. Not only is there no valid reason which would preclude the parties to the final agreement from electing to treat the credit in the manner chosen, that is, reducing the mortgage indebtedness, but this 1948 Act prevented applicants who otherwise owed the Government from getting a cash rebate as a result of Section 9(b)(8). *National Bulk Carriers v. Warren*, 82 F. Supp. 511.

Of greater significance is the fact that the credit was applied retroactively from the date of the final agreement (June 11, 1951) to the date of the Act (March 8, 1946). The Court of Claims has spoken on this precise question in *New York and Cuba Mail Steamship Co. v. United States*, 172 F. Supp. 684, in the following language:

"The date of the Act was March 8, 1946. As we have seen, the plaintiff filed its application for adjustment in May 1946. The adjustment was not finally computed and embodied in the adjustment contract until January 5, 1950. The plaintiff and the Commission, in their computations and in the agreed adjustment, credited the plaintiff with the amounts to which it was entitled to credit, as of March 8, 1946. That meant, of course, that those sums were credited as partial payments on the plaintiff's mortgages as of that date, and that interest accrued to the Government thereafter only on the thereby reduced balances of the mortgages. The Government says that the balances of principal should not have been reduced until the 1950 date when the adjustment was finally agreed to. The Government's [fol. 284] argument would distinguish, because of differences in the text, between different items in the list of adjustments, so far as their effective dates are concerned. This opinion is already too long, and the intricacies of this argument will not be discussed. The purpose of the statute seems to us quite plain. If the plaintiff had bought these used ships for the first time in 1946, the Government would have received in 1946, in cash, or in a mortgage, only the sales price of the

used ships. Since the plaintiff had in 1943 paid, or given mortgages for the higher prices of the then new ships, and since such purchasers were, under Section 9, to be treated like 1946 purchasers, we think Congress did not intend that such purchasers should go on, for several years after 1946, paying interest on the larger amounts which they had promised to pay in 1943." (At 688)

I agree with this interpretation of the Act, and hold that it was entirely proper in the instant case to retroactively apply the credits.

The final question in this issue is whether the plaintiff was granted a double credit on a portion of certain trade-in allowances which were applied in payment of interest on construction progress payments. The interest of $3\frac{1}{2}\%$ charged by the Government on the progress payments made by it to the ship builders was, as this Court has determined in disposing of the first issue raised by the Government's counterclaim, properly included as a part of the original purchase price of the vessel under the vessel purchase contracts. Payments by the plaintiff of such interest, whether made in cash or by trade-in allowances, represent payments by the plaintiff on the original purchase price of the vessels, and for all such payments plaintiff was entitled to [fol. 285] full credit in computing the adjustments under Section 9 of the Ship Sales Act. It is immaterial whether such payments were made in cash or by trade-in allowance.

Dated at Mobile, Alabama, this 2nd day of April 1962.

Daniel H. Thomas, United States District Judge.

[File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
Civil Action No. 2284

WATERMAN STEAMSHIP CORPORATION, Plaintiff,
v.
UNITED STATES OF AMERICA, Defendant.

ORDER FOR JUDGMENT—May 23, 1962

Pursuant to the opinion issued on April 2, 1962, it is hereby ordered that judgment be entered in favor of plaintiff on its claims for the years 1947 through 1950 for tax [fol. 286] and interest in the total amount of \$2,241,388.30 with interest thereon according to law.

Done at Mobile, Alabama, this 23rd day of May, 1962.

Daniel H. Thomas, District Judge, U.S. District Court, Sou. Dist. Ala.

Filed and Entered This the 23 Day of May, 1962, Minute Entry No. 10,433.

William J. O'Connor, Clerk, By John V. O'Brien,
Deputy Clerk.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
NOTICE OF APPEAL—Filed July 20, 1962

Notice is hereby given that the defendant, the United States, hereby appeals to the United States Court of Appeals for the Fifth Circuit from the final judgment entered in this action on May 23, 1962, and from each and every aspect of the Judgment.

Vernol R. Jansen, Jr., United States Attorney.

[File endorsement omitted]

Certificate of Service (omitted in printing).

[fol. 296]

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT
No. 20040

UNITED STATES OF AMERICA, Appellant,
versus
WATERMAN STEAMSHIP CORPORATION, Appellee.

Appeal from the United States District Court for the Southern District of Alabama.

OPINION—March 30, 1964

Before Rives, Cameron and Hays,* Circuit Judges.

Rives, Circuit Judge: This suit for refund of income taxes for the years 1947 through 1950 was tried by the district court without a jury. Pursuant to a carefully con-

* Of the Second Circuit, sitting by designation.

sidered opinion reported as *Waterman Steamship Corporation v. United States*, 203 F.Supp. 915, the court entered judgment for the taxpayer Waterman in the total amount [fol. 297] of \$2,241,388.30, together with interest. On appeal there is no complaint as to the rulings on the three issues which the district court captioned: "I. WATERMAN BUILDING" (203 F.Supp. 917-921), "II. BABY FLAT-TOPS" (Id. 921-925), and "IV. ALABAMA STATE TAX" (Id. 926-928). The remaining questions are: (1) whether Waterman is entitled to a foreign tax credit under section 131 of the Internal Revenue Code of 1939 for certain taxes paid to the Republic of the Philippines;¹ (2) whether the district court correctly determined Waterman's cost basis for depreciation of eighteen vessels whose sales prices were adjusted pursuant to the Merchant Ship Sales Act of 1946;² (3) whether the district court correctly held that interest paid by Waterman on Government-advanced progress payments was properly included in "the original purchase price" of eighteen vessels for purposes of the price adjustment authorized by section 9 of the Merchant Ship Sales Act of 1946.

[fol. 303]

2. Cost Basis of Vessels for Depreciation.

For the purpose of the depreciation issue the facts were also stipulated, and are fairly stated by the district court in 203 F.Supp. at 928. The difference between the amounts contended for as the proper cost basis of the vessels for depreciation is \$8,818,838.55.

The district court decided this issue in favor of the plaintiff taxpayer in line with earlier decisions in *Barber Oil Corporation v. Manning*, D.C. N.J. 1955, 135 F.Supp. 451, 458-461, and *Socony Mobil Oil Co. v. United States, Texaco, Inc. v. United States, Mississippi Shipping Co. v. United States*, Ct. Cl. 1961, 287 F.2d 910. Later the District

¹ 14 Philippine Annotated Laws, Title 72.

² Chapter 82, 60 Stat. 41 (50 U.S.C.A. Appendix, 1952 ed., sec. 1735).

Court for the District of Delaware, in an extensive opinion, declined to agree with any of the earlier decisions and decided the issue in favor of the United States. *National Bulk Carriers, Inc. v. United States*, D.C. Dela. 1963, 214 F.Supp. 585.⁶

After careful study, we are constrained to agree with the District of Delaware, and set forth briefly the reasons [fol. 304] which lead us to that decision. The language of the statute and its legislative history show that Congress intended pre-enactment purchases to be treated as if the sale had occurred on the date of enactment, that is, on a parity with post-enactment purchases. That is explicitly stated in the opening paragraph of section 9(b):

"(b) Such adjustment shall be made as hereinafter provided, by treating the vessel as if it were being sold to the applicant on the date of the enactment of this Act, and not before that time. The amount of such adjustment shall be determined as follows:"

Of the subparagraphs which follow, some provide for a decrease in the cash down payment and mortgage indebtedness [sections 9(b)(1), (2), (3) and (4)] which would adjust the purchase price to conform to the statutory sales price provided by section 3(d)(4). Other subparagraphs provide for adjustments which compensate the purchaser for his investment [section 9(b)(5)], restore charter hire paid or that should have been paid [section 9(b)(6)], and return taxes and tax benefits due to pre-enactment ownership [sections 9(b)(8) and 9(c)(1)]. Those items, which are not capital in nature, do not enter into the computation of cost for purposes of depreciation.

The legislative history of section 9 is set forth at some length in the opinion of the Delaware District Court in 214 F.Supp. at pp. 591-593 and leads to the same conclusion. [fol. 305] It was clearly the intention of Congress to put pre-enactment purchasers and post-enactment purchasers on the same basis, that of the statutory sales price.

⁶ Attached as Appendix A to that opinion at 214 F.Supp. 597-599 is the full text of the pertinent Section 9 of the Merchant Ship Sales Act of 1946.

3. Interest on Progress Payments.

This issue raised by the Government's counterclaim is whether the district court erred in including interest paid by Waterman on Government-advanced progress payments in the calculation of the "original purchase price" of the eighteen vessels. Several other questions originally raised by counterclaim were either withdrawn in the district court or decided against the Government (see 203 F.Supp. 932-934), and are not urged on appeal. We agree with the district court's disposition of this issue (see 203 F.Supp. 930-932). In *New York & Cuba Mail Steamship Co. v. United States*, 1959, 172 F.Supp. 684, 688, the Court of Claims said:

"The Maritime Commission in all such situations treated the interest accrued during the construction period as a part of the capital cost of the ship. We think that, as a matter of sound accounting practice, and of logic, that treatment was right."

Reaching the same result, the Delaware District Court in *National Bulk Carriers, Inc. v. United States*, *supra*, noted that great weight should be given to the interpretation of the Act by the Maritime Commission charged with [fol. 306] its administration and enforcement, and further:

"By interpreting 'original purchase price' to be the total cost to the buyer—contract price plus interest—the basic intent of Congress is furthered. Neither the post-war nor pre-Act buyer has any competitive advantage. They both pay the same price for the ship, the statutory sales price." (214 F.Supp. at 596.)

The full treatment accorded this issue by the district court in this case, and by the Delaware District Court in the *National Bulk Carriers'* case, makes further discussion unnecessary.

The judgment of the district court is reversed and the cause remanded for further proceedings consistent with this opinion.

REVERSED AND REMANDED.

CAMERON, CIRCUIT JUDGE, CONCURRING IN PART AND, IN
PART, DISSENTING:

The decision of the majority of the items designated "*1. Foreign Tax Credit Issue*" and "*3. Interest on Progress Payments*" accords with my own views, and in the decision on these issues I concur. The holding of the majority on the issue designated "*2. Cost Basis of Vessels for Depreciation*" goes so far afield of my own view that I am constrained to state my views in a brief dissent.

[fol. 307] - Admittedly, there is no clear statutory authority for the decision of the majority that Appellee's basis for depreciation of the vessels which form the subject of this litigation must be reduced by the \$8,818,839.55 in dispute, which amount represents reductions in the *additional* amount of the cost of said vessels to be paid under the purchase contracts as originally executed. The majority appears to adopt the conclusion of the District Court of Delaware in *National Bulk Carriers, Inc. v. United States*, D.C. Dela. 1963, 214 F. Supp. 585. That court, basing its holding solely upon its reading of the legislative history of Section 9 of the Merchant Ship Sales Act of 1946, 50 U.S.C., Appendix, 1952 ed., Sec. 1735 states as its conclusion:

"A decision for the taxpayer would be contrary to the equitable principles that motivated the Congress to act. A larger depreciation basis for wartime buyers for the same class of ships would give them a substantial competitive advantage over similar (sic) situated post war buyers. With the language and the background of the legislation in mind, the government must prevail." 214 F. Supp. at page 593.

The legislative history of this statute does not, in my opinion, support this conclusion. Indeed, the Chief Judge of the District Court himself recognized the uncertain area into which his opinion ventured when, in the paragraph preceding that above quoted, he said:

"It is for the Supreme Court or Congress to conclusively determine this problem." Ibid. at page 593.

[fol. 308] I find no such uncertainty or obscurity in the congressional intent on the point in issue. The basis of property for the purpose of computing depreciation is determined by statute, § 113 (a), Internal Revenue Code of 1939, 26 U.S.C.:

"The basis of property shall be the cost of such property; except that—"

There follow in subsections (1) through (23) enumerated exceptions to the quoted rule, none of which even remotely touches upon this problem.

"These and the other provisions upon which they depend create exceptions to a general rule and should not be extended by implication or otherwise to situations not expressly provided for." (Referring to predecessors to §§ 113 (a) (1) et seq.) *Central National Bank*, 29 BTA 530.

When Congress intended that its acts authorizing the redetermination of the price of ships purchased under our various subsidized ship procurement programs would also determine the basis of property in a manner differing from § 113 (a), *supra*, or would determine other factors affecting income tax liability of purchasers, it has always said so specifically.¹

¹ For example, § 510 of the Merchant Marine Act of 1936 (46 U.S.C. 1160 (e)):

"No gain shall be recognized to the owner for the purpose of Federal income taxes in the case of a transfer of an obsolete vessel to the Federal Maritime Board or Secretary of Commerce under the provisions of this section. The basis for gain or loss upon a sale or exchange and for depreciation under the applicable Federal income-tax laws of a new vessel acquired as contemplated in this section shall be the same as the basis of the obsolete vessel or vessels exchanged for credit upon the acquisition of such new vessel, increased in the amount of the cost of such vessel (other than the cost represented by such obsolete vessel or vessels) and decreased in the amount of loss recognized upon such transfer."

And § 510 of that Act (46 U.S.C. 1161):

"The basis for determining gain or loss and for depreciation, for the purposes of Federal income or excess profits taxes, of

[fol. 309] § (b) (8) of the Merchant Ship Sales Act of 1946, *supra* (the statute construed by the majority opinion to support its conclusion), specifies how the income tax effect of its re-framing of the purchase price shall be treated:

"There shall be subtracted from the sum of the credits in favor of the Commission under the foregoing provisions of this subsection the amount of any overpayments of Federal taxes by the applicant resulting from the application of subsection (c) (1), and there shall be subtracted from the sum of the credits in favor of the applicant under the foregoing provisions of this subsection the amount of any deficiencies in Federal taxes of the applicant resulting from the application of subsection (c) (1). If, after making such subtractions, the sum of the credits in favor of the applicant exceeds the sum of the credits in favor of the Commission, such excess shall be paid by the Commission to the [fol. 310] applicant. If, after making such subtractions, the sum of the credits in favor of the Commission exceeds the sum of the credits in favor of the applicant, such excess shall be paid by the applicant to the Commission. Upon such payment by the Commission or the applicant, such overpayments shall be treated as having been refunded and such deficiencies as having been paid."

It seems, therefore, abundantly clear that Congress has uniformly spelled out any exception to the rule of § 113 (a), *supra*, which it intended to apply.

On the point here in issue, the House of Representatives did consider a bill which would have provided specifically

any new vessel constructed, reconstructed, reconditioned, or acquired by the taxpayer, or with respect to which purchase-money indebtedness is liquidated as provided in subsection (g) of this section, in whole or in part out of the construction reserve fund shall be reduced by that portion of the deposits in the fund expended in the construction, reconstruction, reconditioning, acquisition, or liquidation of purchase-money indebtedness of the new vessel which represents gain not recognized for tax purposes under subsection (c) of this section."

such an exception, and the result Appellant seeks (see H.R. 3603, 79th Congress, 1st Session), which was not passed. The Senate likewise considered, and indeed enacted a bill including as § 9 (e) (1), thereof a provision which also would have produced this result. It provided:

"If an adjustment in the purchase price of a vessel is made under this Section, the income and excess profits taxes of the vessel owner under the Internal Revenue Code for the taxable year within which the delivery of the vessel was made to the purchaser and for *subsequent taxable years*, shall be redetermined. For such purposes of redetermination the *vessel shall be considered as having been acquired at the adjusted* [fol. 311] purchase price, and the income and deductions attributable to such vessel shall be determined as if this Section had been in effect on the date of such delivery." [Emphasis added.] See consideration of H.R. 3603, 79th Congress, 1st Session in the Senate, December 4, 1945 (Legislative day October 29, 1945).

However, in conference, this provision was eliminated, and the statute we are here considering was approved. (See House Conference Report No. 1526, 79th Congress, 2nd Session, to accompany H.R. 3603, dated February 6, 1946) and subsequently enacted by both Houses as the Merchant Sales Act of 1946, *supra*.

Moreover, when the executive branch, acting by and through the Commissioner of Internal Revenue of the Treasury Department, undertook to write in by administrative action that which Congress had refused to enact, in Mimeograph 6366, 1949-1 C.B. 270, the 81st Congress, in H.R. 3419, passed by both Houses but vetoed by President Truman (see 96 Cong. Rep. P.p 15, 79102), enacted a bill which provided the precise treatment here sought by Appellee.

I do not agree with the District Court of Delaware (in 214 F.Supp. page 593) that "... these statements are entitled to little or no weight" because of the holding of *Fogarty v. United States*, 340 U.S. 8. Here we have no effort of a much later Congress to supplant the views of its pre-

decessor; but, to the contrary, the second Congress following, expressing itself through the *same* committees, [fol. 312] supporting and implementing the act of the earlier Congress. It is difficult to conceive of a clearer exposition of legislative intent than the sum of the foregoing actions.

The Congress manifestly intends that § 113 (a), *supra*, shall be applied to determine the basis of these vessels; that the basis is "the cost of such property."

The word "cost" used in this context has a clear meaning:

"The amount in value paid, charged, or engaged to be paid for anything bought or taken in barter." Webster's new Twentieth Century Dictionary, Standard Reference Works, 1956 Edition.

It is undisputed in this record that Appellee had paid in cash \$16,235,446.21, on account of the purchase price of the subject vessels, prior to the redetermination of its price (R. 75, 83); that the Adjusted Basis of vessels traded in thereon was \$175,876.40 (R. 75, 83); that Appellee paid the additional sum of \$86,037.70 upon settlement of the adjusted price (R. 84), and that the mortgage debt to be paid thereon, after crediting thereto all adjustments, including the \$8,818,838.55 here in controversy, was \$10,182,779.04 (R. 79). The total paid or to be paid for these vessels is therefore \$26,680,139.35. This is the "cost" and this is the basis under § 113 (a), *supra*.

When the foregoing is considered together with the comprehensively documented opinion of the Court of Claims in [fol. 313] *Socony Mobil Oil Co., Inc. et al. v. United States*, 287 F.2d 910, the decision of the District Court of New Jersey in *Barber Oil Corporation v. Manning*, 135 F. Supp. 451, and Judge Thomas' carefully considered opinion in this action below, a decision for Appellee appears absolutely compelled.

Therefore, believing that to hold otherwise represents a clear departure from the legislature's plainly express intention, I respectfully dissent from the majority's holding as to point 2, "Cost Basis of Vessels for Depreciation."

[fol. 314]

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

October Term, 1963

No. 20040

D. C. Docket No.

UNITED STATES OF AMERICA, Appellant,

versus

WATERMAN STEAMSHIP CORPORATION, Appellee.

Appeal from the United States District Court for the
Southern District of Alabama.

Before Rives, Cameron and Hays*, Circuit Judges.

JUDGMENT—March 30, 1964

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Alabama, and was argued by counsel;

On Consideration Whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, reversed; and that this cause be, and it is hereby remanded to the said District Court for further proceedings consistent with the opinion of this Court.

"Cameron, Circuit Judge, Concurs in Part and Dissents in Part."

Issued as Mandate: May 13, 1964.

* Of the Second Circuit, sitting by designation.

[fol. 315] [File endorsement omitted]

[fol. 316]

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 20,040

[Title omitted]

PETITION FOR REHEARING EN BANC BY WATERMAN STEAMSHIP
CORPORATION, APPELLEE—filed April 20, 1964

*To the Honorable Judges of the United States Court of
Appeals for the Fifth Circuit:*

Waterman Steamship Corporation, Appellee herein, presents this, its petition for a rehearing *en banc*, as provided in 28 U.S.C.A., § 46(c) and Rule 25a of this Court, on the appeal herein and of this Court's opinion and decree rendered in the above numbered and entitled cause on March 30, 1964, reversing and remanding that portion of the decree of the United States District Court for the Southern District of Alabama (Thomas, Judge), which had held that the cost basis of the eighteen (18) vessels, whose prices had been adjusted under the Merchants Ship Sales Act of 1946, was as contended by Appellee and decreed judgment in favor of Appellee for a refund of income taxes paid by it on the cost basis of said vessels for depreciation purposes, [fol. 317] and in support thereof, respectfully shows:

I.

The majority of the Court erred in its reliance on the opinion of the Federal District Court for the District of Delaware (Wright, Chief Judge) in *National Bulk Carriers Inc. v. United States*, 214 F. Supp. 585 (D.C. Del., 1963) in determining issue 2, Cost Basis of Vessels for Depreciation. As noted in the majority opinion of the Court (p. 8), the same issue has been before three different Federal District Courts and the Court of Claims in

six different cases (the three cases before the Court of Claims were consolidated for trial before that Court). *Barber Oil Corporation v. Manning*, 135 F. Supp. 451, 458-67 (D.C. N.J., 1955, Modarelli, Judge); *Socony Mobil Oil Co. v. United States*, *Texaco, Inc. v. United States*, 287 F. 2d 910, 911-914 (Ct. Cls., 1961, opinion by Madden, Judge, with Reed, Justice, Jones, Chief Judge, and Durfee and Laramore, Judges, concurring), rehearing denied, 289 F. 2d 326 (1961); *Waterman Steamship Corporation v. United States*, 203 F. Supp. 915 (1962); *National Bulk Carriers, Inc. v. United States*, *supra*. Of the three Federal District Judges and of the five Judges of the Court of Claims (one a retired Justice of the United States Supreme Court sitting by designation), who previously had considered the same issue, only one Judge, the Chief Judge for the District Court for the District of Delaware, had held in favor of the position contended by the Government. This Court is the first Court of Appeals to have this issue presented, and it has decided in favor of the Government in a two-one decision. Thus, of the eleven Judges who have thus far considered this issue, eight have favored the position of the [fol. 318] Taxpayers and only three have favored the position of the Government. The latter three consist of the Federal District Judge for the District of Delaware and the two Judges of this Court (one of whom is from the Second Circuit, sitting by designation) who base their decision on the Delaware District Court's opinion.

It is noteworthy that the Delaware District Court relied entirely on the legislative intent and purpose of the Merchants Ship Sales Act and, particularly, § 9 thereof, which is admittedly not a tax statute and does not purport as such to provide the tax basis of vessels whose purchase prices have been adjusted thereunder, and completely ignored the actual economic cost of the vessels to the Taxpayer, which is determined under Section 113 of the Internal Revenue Code of 1939. In fact, in fn. 38 (p. 593) to its opinion, that Court pointed out that the Court in the *Waterman* case had "reasoned that the 'economic cost' must be the taxpayer's basis under the code" and, as a preface to

that footnote, stated that the case was decided "on different grounds from the ones set out in" that Court's opinion. Thus, that opinion clearly ignored the normal tests and general rules applicable in determining the basis of property for depreciation purposes. This fallacy is clearly pointed out in the opinion of Circuit Judge Cameron (since deceased), in which he dissents from the majority opinion on that particular issue (beginning at p. 13). In this connection, it is also important to note that the Delaware District Court's opinion (p. 592) refers to the House and Senate reports (see fn. 26 and 27, p. 592), which were made before the amendment of Section 9 to its final form and to the subsequent conference report (see fn. 28, p. 592), which makes no mention of the amendment. It does not, except in a footnote (fn. 39, p. 593), recognize that the original bill in the House and in the Senate, supported the Govern-[fol. 319] ment's position, but that the amendment of Section 9 of the House Bill, which was ultimately approved in conference and adopted by both houses, completely changed the theory and effect of Section 9. The Delaware District Court is also completely and strangely silent on the fact and the effect of the deletion of Section 9(e)(1) from the original Senate Bill. This too, is pointed out in Circuit Judge Cameron's dissenting opinion, at pp. 15 and 16.

II.

A majority of the Court erred in its division of the subparagraphs of Section 9(b) of the Act into (1) those making an adjustment in the statutory sales price and (2) those making certain other adjustments to equalize pre-enactment and post-enactment purchases of vessels, and particularly in its reference to the fact that certain of the items of adjustment were not capital in nature and, therefore, did not enter into the computation of costs for purposes of depreciation (p. 9). As pointed out earlier, the Delaware District Court did not at all consider the economic cost of the vessels to the taxpayer in that case. Compare this with *Barber Oil Corp. v. Manning, supra*, in which that Court agreed with the taxpayer's "contention that its 'costs' was the amount it 'paid'" (p. 460), and with

Socony Mobil Oil Co. v. United States, Texaco, Inc. v. United States, Mississippi Shipping Co. v. United States, supra, in which the Court of Claims stated that "the Government's asserted 'cost' is not the economic, dollars-and-cents cost, but an artificial figure, legally deemed, for this tax purpose, to be the cost though it is not in fact the cost." (p. 913), and with the District Court's opinion in the *Waterman* case, in which it stated that "the cost basis in the instant case can best be determined by comparing [fol. 320] the economic cost of the vessels to the plaintiff the moment before and the moment after the Act became effective." (p. 930). As pointed out by Circuit Judge Cameron in his dissenting opinion (p. 17), the amounts actually paid by the Appellee are undisputed in the record, and that "this is the 'cost' and this is the basis under Section 113 (a)." The fact that certain adjustments were measured by items that ordinarily are not considered capital items, does not mean that the cost figure resulting from the inclusion of such adjustment so measured is not capital in nature. As pointed out in *Barber Oil*, the "credit to the Commission merely was one of the statutory adjustments and as such it did not transform plaintiff's earlier * * * and subsequent payments * * * or a portion thereof into 'refunds' or not-out-of-pocket payments." (p. 460).

III.

The petition for rehearing *en banc* should be granted for an additional reason. The issue on which Appellee is requesting a rehearing was determined in favor of Appellant by the vote of two Judges, only one of which is a permanent Judge of this Court, with another Judge, who was, until his recent death, a permanent Judge of this Circuit, dissenting from the majority holding on this issue. Therefore, on this important issue, the permanent Judges of this Circuit, who have passed on this issue, are evenly divided. Also see the analysis in I hereinabove as to the other courts and other judges who have considered and passed on this issue.

Also, this issue is of tremendous import throughout the shipping industry. Two hundred and sixty-four ves-

sels were sold before March 8, 1964, which were eligible for price adjustment under Section 9 (R. 76). The total adjustments in the purchase prices of these vessels under [fol. 321] Section 9 were \$68,000,000.00 (91 Cong. Rec., Pt. 7, p. 9282 et seq.), of which a substantial portion would involve differences in the statutory sales prices and the economic costs to the owner for depreciation purposes. Therefore, there is a substantial amount of tax money involved from both the taxpayer and the Government's position. The point in question arises in each taxable year in which depreciation on any such vessel is claimed by the taxpayer. Thus, in the case at hand, only four of Appellee's tax years (1947 through 1950) are at issue. However, the question will be at issue in the remaining 16 years of the life, for depreciation purposes, of these vessels. Thus, the issue could be raised, and may face this Court, in future refund cases and appeals therefrom. Also, in this connection, the taxpayer in *Mississippi Shipping Co., Inc. v. United States*, *supra*, (now Delta Steamship Lines, Inc.) is a resident of a state located in the Fifth Circuit. This same issue was decided in that taxpayer's refund case before the Court of Claims opposite to the decision of this Court. Should that taxpayer, in future years, claim depreciation as allowed it by the Court of Claims and this be disputed by the Commissioner under the authority of this decision, such taxpayer might file a claim for refund in the District Court located in the Fifth Circuit rather than in the Court of Claims and would thereby be faced with the conflicting decision of this Circuit.

Although such conflicts may properly be within the jurisdiction of the United States Supreme Court to ultimately decide and determine, as intimated in the Delaware District Court's decision, as well as in the dissenting opinion of Circuit Judge Cameron (p. 12), it would be the better practice for the entire Court of this Circuit to hear and determine this issue and, perhaps, thereby eliminate any conflict of opinion and decision between it and the Court [fol. 322] of Claims, than to require the Appellee to petition for writ of certiorari on the basis of such conflicts, when the only two permanent Judges of this Circuit who have participated in this issue differ on this issue.

Wherefore, Appellee and Petitioner prays ~~that~~ as to issue No. 2, the Cost Basis of Vessels for Depreciation, a rehearing *en banc* be granted herein and that on such rehearing, the opinion and decree of this Court of March 30, 1964, be recalled, and that the decree below of the United States District Court for the Southern District of Alabama, wherein judgment was rendered for Appellee, be affirmed and that this appeal be dismissed.

Respectfully submitted,

/s/ WILLIAM H. ARMBRECHT

/s/ JOHN W. McCONNELL, JR.

Of Counsel: Armbricht, Jackson, McConnell & DeMouy,
1101 Merchants Bank Building, Mobile, Alabama.

[fol. 323]

CERTIFICATE OF COUNSEL

I, John W. McConnell, Jr., one of the attorneys of record for Appellee and Petitioner, do hereby certify that the foregoing Petition is presented in good faith and not for delay and that a copy thereof has been served on counsel of record for the Government by mail, as required by law, on this 18th day of April, 1964.

/s/ JOHN M. McCONNELL, JR.

[fol. 324]

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT
No. 20040

UNITED STATES OF AMERICA, Appellant,
versus
WATERMAN STEAMSHIP CORPORATION, Appellee.

Appeal from the United States District Court for the
Southern District of Alabama.

ORDER DENYING PETITION FOR REHEARING—May 4, 1964

Before Rives and Hays*, Circuit Judges.**

Per Curiam:

The appellee's petition for rehearing is

DENIED.

[fol. 325] Clerk's Certificate to Foregoing Transcript
(omitted in printing).

* Of the Second Circuit, sitting by designation.

** Judge Cameron participated in the decision of this case on original hearing, concurring in part and dissenting in part, but died before the petition for rehearing was filed.

[fol. 326]

IN THE SUPREME COURT OF THE UNITED STATES

No. 245, OCTOBER TERM, 1964

WATERMAN STEAMSHIP CORPORATION, Petitioner,

v.

UNITED STATES.

ORDER ALLOWING CERTIORARI—December 7, 1964.

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit is granted, and the case is placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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JUL 2 1964

JOHN F. DAVIS, CLERK

IN THE
Supreme Court of the United States

OCTOBER TERM, 1963

No. **245**

WATERMAN STEAMSHIP CORPORATION,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

**PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT.**

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IN THE
Supreme Court of the United States
OCTOBER TERM, 1963.

No. _____

WATERMAN STEAMSHIP CORPORATION,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

**PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT.**

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit entered in the above case on March 30, 1964.

Citations to Opinions Below.

The opinion of the District Court for the Southern District of Alabama (R. 247); the pertinent portion of which (R. 247, 271-276) is printed in Appendix B hereto, *infra*, p. 30, is reported at 203 F. Supp. 915. The opinion of the Court of Appeals for the Fifth Circuit

(R. 296), the pertinent portion of which is printed, with the dissenting opinion of Circuit Judge Cameron (R. 306), in Appendix B hereto, *infra*, p. 21, is reported at 330 F. 2d 128.

Jurisdiction.

The judgment of the Court of Appeals for the Fifth Circuit was made and entered on March 30, 1964 (R. 314), printed in Appendix B hereto, *infra*, p. 29. Rehearing was denied on May 4, 1964 (R. 324). The jurisdiction of this court is invoked under 28 U. S. C. Sec. 1254(1).

Question Presented.

The Merchant Ship Sales Act of 1946, 50 U. S. C. App., Sec. 1735-1746 (hereinafter sometimes referred to as the "Act"), provided for the sale of certain vessels owned by the United States Maritime Commission (herein referred to as "Maritime Commission") at the "statutory sales price," as defined in the Act. However, as to a vessel purchased from the Maritime Commission prior to the date of the Act, the Act provided that the owner of such a vessel, upon application, would be entitled to an adjustment in the price of such vessel under Section 9 of the Act. Petitioner applied for and obtained a reduction in the aggregate purchase price of certain vessels previously purchased by it from the Maritime Commission.

The sole question presented here is whether or not the tax cost basis of vessels purchased by Petitioner prior to the enactment of the Act, and whose original purchase price was "adjusted" downward pursuant to Section 9 of the Act, is the economic investment in the

vessels represented by their original purchase price¹ less the amount of that price adjustment, as determined under the provisions of Section 113(a) of the Internal Revenue Code of 1939 (hereinafter referred to as the "Code").

Statutes Involved.

The statutory provisions involved are Sections 23(1) and (n), 113(a) and (b), and 114(a) of the Code, 26 U. S. C., and Sections 1735-1746 of the Act, 50 U. S. C., Appendix, pertinent portions of which are printed in Appendix A, *infra*, p. 11.

Statement.

Prior to March 8, 1946, Petitioner purchased eighteen C-2 dry cargo vessels from Maritime Commission at a total purchase price of \$49,582,767.02. (Ex. F, Par. 1, R. 74.) As of March 7, 1946, Petitioner's proper and recognized adjusted tax cost basis for the vessels under the Code was \$47,149,043.42.² (Ex. F, Par. 3, R. 75.)

¹ Such original price being correctly adjusted, of course, as required by the Code to reflect transactions prior to the effective date of the price adjustment under the Act.

² This total adjusted tax cost basis was composed of the following elements:

(1) Cash	\$ 6,449,107.02
(2) Adjusted Tax Cost Basis of Four Vessels Traded in.....	175,876.40
(3) Purchase Money Mortgage Indebtedness....	40,524,060.00
Total	<u>\$47,149,043.42</u>

During the period from the original purchase of the vessels through March 7, 1946, the original mortgage indebtedness was reduced by additional cash payments of \$9,786,339.19, which payments left the total adjusted tax cost basis of the vessels unchanged.

Upon the enactment of the Act, Petitioner made application for an adjustment in purchase price of the eighteen vessels purchased by it prior to March 8, 1946. On December 30, 1946, after this application had been approved by the Maritime Commission, an "Interim Agreement" for an interim adjustment in the purchase price of the vessels was entered into by Petitioner and the Maritime Commission. (Ex. F, Par. 5 and Ex. S-1 thereto, R. 76.) On June 11, 1951, Petitioner and Maritime Commission entered into a "Final Agreement" for a final adjustment in the price of the vessels, pursuant to Section 9 of the Act. (Ex. F, Par. 7 and Ex. S-3 thereto, R. 77-78 and 87-110.)

The total net adjustment in price under Section 9 of the Act, which was applied in reduction of Petitioner's mortgage indebtedness, as set out in the Final Agreement, was determined to be \$20,468,904.07. (Ex. F, Par. 9, R. 82.) This adjustment left a balance of mortgage indebtedness on the vessels, as of March 8, 1946, which Petitioner was obligated to pay, of \$10,182,779.04. (Ex. F, Par. 9, R. 83.)³ After the adjustments under Section 9 of the Act and the additional cash payments made as of March 8, 1946, Petitioner determined that for Federal income tax purposes,

³ Original mortgage indebtedness.....	\$40,524,060.00
Payments thereon prior to	
3/7/46	\$ 9,786,339.19
Reduction in mortgage indebted-	
ness as of 3/8/46 under	
Section 9 of the Act.....	20,468,904.07
Additional cash payment on	
3/8/46	86,037.70 (30,341,280.96)
Adjusted mortgage indebtedness as of 3/8/46....	<u>\$10,182,779.04</u>
(R. 74-75, 82-83.)	

its adjusted cost basis for these vessels, as of that date, was \$26,680,139.35.*

Petitioner filed claims for refund for the tax years in question (1947 through 1950) for the increased taxes paid by it, resulting from the lowered depreciation deduction in respect of the eighteen vessels on the more than eight and a half million dollars difference between the cost basis as contended for by Petitioner and as recognized and allowed by the Internal Revenue Service.⁵ These claims for refunds were disallowed and suit was subsequently filed thereon by Petitioner.

* Actual economic investment and adjusted tax cost basis as of 3/7/46.....	\$47,149,943.42
Total adjustment in mortgage indebtedness under Section 9 of the Act.....	(20,468,904.07)
Actual economic investment and adjusted tax cost basis as of 3/8/46.....	<u>\$26,680,139.35</u>
(R. 75, 82-84.)	

This actual economic investment and adjusted tax cost basis consisted of the following elements:

Cash or Credits:	
Original cash payments.....	\$6,449,107.02
Adjusted tax cost basis of four vessels traded in.....	175,876.40
Payments on mortgage indebtedness through 3/7/46.....	9,786,339.19
Cash payment on 3/8/46.....	<u>86,037.70</u>
Adjusted mortgage indebtedness as of 3/8/46.....	<u>10,182,779.04</u>
Adjusted tax cost basis.....	<u>\$26,680,139.35</u>
(R. 74-75, 83-84.)	

⁵ The depreciation was allowed on the statutory sales price of \$17,997,981.84 less certain adjustments not here in dispute. (R. 78, 84-86.)

Reasons for Granting the Writ.

The decision below should be reviewed because (1) it is in conflict with the decision of the Court of Claims in *Socony Mobil Oil Company, Inc., et al. v. United States*, 287 F. 2d 910. (1961), rehearing denied; 289 F. 2d 326 (1961), the pertinent portion of which is printed in Appendix C hereto, *infra*, p. 51; (2) it erroneously failed to follow the well-established principles for the determination of taxpayer's Federal income tax cost basis, which are codified in the Code (which provisions are continued substantially unchanged in the Internal Revenue Code of 1954), by allowing its interpretation of Section 9 of the Act (a non-tax statute) to govern and modify such principles; and (3) of its far-reaching importance to a major segment of the transportation industry, by reason of the number of taxpayers involved, and the amount of tax money involved, both for the Government and the taxpayers.

As in the case of *Massachusetts Trustees of Eastern Gas and Fuel Associates v. United States*, U. S. , 12 L. ed. 2d 268 (1964), the instant case and the other cases hereinafter cited involve conflicting interpretations of the effect of the Act on tax principles contained in the Code, and a considerable number of pending suits or tax refund claims will turn on resolution of this issue.

1. The decisions of the court below in the instant case and in *National Bulk Carriers, Inc. v. United States*, 214 F. Supp. 585 (D. Del., 1963) (herein sometimes

referred to as the "*National Bulk*" case),⁶ upon the authority and rationale of which the instant case was decided, and of the Court of Appeals for the Third Circuit on the appeal of the *National Bulk* case, have been decided adversely to the taxpayers by the Courts of Appeal for the Third and Fifth Circuits, respectively, and are in direct and irreconcilable conflict with the decision of the United States Court of Claims in three cases which were consolidated for trial: *Socony Mobil Oil Company, Inc. v. United States*, *Texaco, Inc. v. United States*, and *Mississippi Shipping Co., Inc. v. United States*, previously cited herein as *Socony Mobil Oil Company, Inc. v. United States*, *supra*. The Court of Claims subsequently reaffirmed its position on this issue in the unreported decisions in *Texaco, Inc. v. United States*, Court of Claims Docket Nos. 97-61, 98-61, 153-61, 154-61, Memorandum Order Granting Plaintiff's Motion for Summary Judgment Without Opinion (December 17, 1962), Final Judgment on calculation of amount entered March 29, 1963. These cases involved the amount of depreciation deduction for years subsequent to those in the original Court of Claims case of *Texaco, Inc. v. United States*, *supra*, but with respect to the same vessels.

The conflict of opinion and authority between the Court of Claims and the instant case and its companion case was recognized by each of the respective Courts of Appeal as their opinions indicate.

⁶ The instant case is a companion case to the *National Bulk* case. Pertinent portions of the opinion of the District Court by Wright, C. J., are printed in Appendix B, *infra*, p. 36. On appeal, that decision was, subsequent to the decision of the court below, unanimously affirmed in favor of the Government by the Court of Appeals for the Third Circuit in an opinion by Staley, J., in which Ganey and Smith, JJ., concurred. Pertinent portions of that decision are printed in Appendix B, *infra*, p. 51, which decision is reported in 331 F. 2d 407. A petition in the *National Bulk* case is being filed simultaneously herewith.

This situation presents a very real conflict of opinion and authority which, if unresolved, will create a serious problem of United States income tax administration, since the position of the Court of Claims, which is favorable to the taxpayer on this issue, will provide any taxpayer, regardless of geographical location, with a continuously available forum in which a favorable result on this issue seems assured.

2. The essence of the issue is the relationship of the pertinent provisions of the Code and those providing for an adjustment in price under Section 9 of the Act. The court below in a very brief majority opinion by Rives, J., concurred in by Hays, J., erroneously failed to consider this relationship and simply cited and followed the decision of the Delaware District Court in the *National Bulk* case, *supra*. That opinion and the opinion of the Court of Appeals for the Third Circuit, affirming on appeal, contain an extensive discussion of the Act. However, without any detailed consideration of the well-established tax cost basis principles contained in the Code, these courts held, in effect, that taxpayers receiving a price adjustment under the Act have imposed upon them the so-called statutory sales price as their tax cost basis for the vessels involved, even though none of such vessels were sold under the Act and even though that price bears no relationship to taxpayers' economic investment in the vessels involved. Both courts relied entirely on their interpretation of the legislative history and purpose of the Act.

In contrast with the majority opinion of the court below, the dissenting opinion of Cameron, J., contains a thorough and correct analysis of the relationship between the tax cost basis provisions of the Code and the provisions for an adjustment in price under the Act.

The Court of Claims, in reaching a contrary result on this issue in the three cases consolidated for trial, *Socony Mobil Oil Company, Inc., et al*, cases, *supra*, correctly analyzed the above relationship in a thorough and carefully-reasoned opinion by Madden, J., in which Mr. Justice Reed (sitting by designation), Jones, C. J., and Durfee and Laramore, JJ., concurred.

3. This issue is of far-reaching importance to a major segment of the United States shipping industry. One hundred and ninety-two vessels were sold by the Maritime Commission prior to March 8, 1946, for which applications for adjustment in price under Section 9 of the Act were made.⁷ The total adjustments in the purchase prices of these vessels under Section 9 of the Act were approximately \$96,300,000, of which a substantial portion and a very substantial resultant amount of income taxes are involved in this issue. In addition to the instant case and its companion case, and four other reported cases, the following are the known pending cases which involve this same question and which could be finally resolved by a decision on this point: *Keystone Tankship Corporation v. United States*, U. S. Court of Claims, Docket No. 240-61; *Moore-McCormack Lines, Inc. v. United States*, U. S. Court of Claims, Docket No. 286-62, *Moore-McCormack Lines, Inc.*, Tax Court of the United States, Docket No. 2887-62, and *United States Lines Co.*, Tax Court of the United States, Docket No. 1247. It is believed that a substantial number of other taxpayers are likewise faced with this same question but have not yet instituted litigation.

⁷ Hearings Before a Subcommittee of the Committee on Interstate and Foreign Commerce of the Senate, 81st Cong., 2d Sess., Pt. 4, pp. 993-996.

tion in the courts because returns have been held open pending adjudication of this question.

The issue is also a continuing one, inasmuch as it may be raised annually by Respondent in respect of each taxpayer who has received a price adjustment under the Act for all tax years during the useful or economic lives of the vessels involved. Witness the experience of Texaco, Inc., as reflected in the unreported cases of *Texaco, Inc. v. United States, supra*, of being required to litigate its right to annual depreciation deductions for subsequent years after the Court of Claims had previously established the controlling principle for earlier years.

Conclusion.

For the reasons set forth above, it is respectfully submitted that this petition for a writ of certiorari should be granted, and that this case and its companion case, *National Bulk*, be heard seriatim or consolidated for argument, to which Petitioner hereby consents.

Respectfully submitted,

JOHN W. McCONNELL, JR.
Counsel for Petitioner.

July 1, 1964.

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Mobile, Alabama,
Of Counsel.

APPENDIX A.

Statutes Involved.

INTERNAL REVENUE CODE OF 1939, 26 U. S. C.:

SEC. 23. DEDUCTIONS FROM GROSS INCOME.

In computing net income there shall be allowed as deductions:

(l) [As amended by Sec. 121(c) of the Revenue Act of 1942, c. 619, 56 Stat. 798] *Depreciation*.—A reasonable allowance for the exhaustion, wear and tear (including a reasonable allowance for obsolescence)—

(1) of property used in the trade or business, * * *

(n) *Basis for Depreciation and Depletion*.—The basis upon which depletion, exhaustion, wear and tear, and obsolescence are to be allowed in respect of any property shall be as provided in section 114.

(26 U. S. C. 1952 ed., Sec. 23.)

SEC. 113. ADJUSTED BASIS FOR DETERMINING GAIN OR LOSS.

(a) *Basis (Unadjusted) of Property*.—The basis of property shall be the cost of such property; * * *

(b) *Adjusted Basis*.—The adjusted basis for determining the gain or loss from the sale or other disposition of property, whenever acquired, shall be the basis determined under subsection (a), adjusted as herein-after provided.

(26 U. S. C. 1952 ed., Sec. 113.)

SEC. 114. BASIS FOR DEPRECIATION AND DEPLETION.

(a) *Basis for Depreciation.*—The basis upon which exhaustion, wear and tear, and obsolescence are to be allowed in respect of any property shall be the adjusted basis provided in section 113(b) for the purpose of determining the gain upon the sale or other disposition of such property.

(26 U. S. C. 1952 ed., Sec. 114.)

Merchant Ship Sales Act of 1946, c. 82, 60 Stat. 41,
50 U. S. C. Appendix;

Sec. 3. As used in this Act the term—

(a) "Commission" means the United States Maritime Commission.

(b) "War-built vessel" means an oceangoing vessel of one thousand five hundred gross tons or more, owned by the United States and suitable for commercial use—

(1) which was constructed or contracted for by or for the account of the United States during the period, beginning January 1, 1941, and ending with September 2, 1945; or

(2) which having been constructed during the period beginning September 3, 1939, and ending with September 2, 1945, was acquired by the United States during such period.

(c) "Prewar domestic cost," as applied to any type of vessel, means the amount determined by the Commission, and published by the Commission in the Federal Register, to be the amount for which a standard vessel of such type could have been constructed (without its national defense features) in the United States under normal conditions relating to labor, materials, and other elements of cost, obtaining on or about January 1, 1941. In no case shall the prewar.

domestic cost of any type of vessel be considered to be greater than 80 per centum of the domestic war cost of vessels of the same type.

(d) "Statutory sales price," as applied to a particular vessel, means, in the case of a drycargo vessel, an amount equal to 50 per centum of the prewar domestic cost of that type of vessel, and in the case of a tanker, such term means an amount equal to 87½ per centum of the prewar domestic cost of a tanker of that type, such amount in each case being adjusted as follows:

(1) If the Commission is of the opinion that the vessel is not in class, there shall be subtracted the amount estimated by the Commission as the cost of putting the vessel in class.

(2) If the Commission is of the opinion that the vessel lacks desirable features which are incorporated in the standard vessel used for the purpose of determining prewar domestic cost, and that the statutory sales price (unadjusted) would be lower if the standard vessel had also lacked such features, there shall be subtracted the amount estimated by the Commission as the amount of such resulting difference in statutory sales price.

(3) If the Commission is of the opinion that the vessel contains desirable features which are not incorporated in the standard vessel used for the purpose of determining prewar domestic cost, and that the statutory sales price (unadjusted) would be higher if the standard vessel had also contained such features, there shall be added the amount estimated by the Commission as the amount of such resulting difference in statutory sales price.

(4) There shall be subtracted, as representing normal depreciation, an amount computed by applying to the statutory sales price (determined without

regard to this paragraph) the rate of 5 per centum per annum for the period beginning with the date of the original delivery of the vessel by its builder and ending with the date of sale or charter to the applicant in question, and there shall also be subtracted an amount computed by applying to the statutory sales price (determined without regard to this paragraph) such rate not in excess of 3 per centum per annum in the case of a vessel other than a tanker, and not in excess of 4 per centum per annum in the case of a tanker, for such period or periods of war service as the Commission determines will make reasonable allowance for excessive wear and tear by reason of war service which cannot be or has not been otherwise compensated for under this subsection.

No adjustment, except in respect of passenger vessels constructed before January 1, 1941, shall be made under this Act which will result in a statutory sales price which (1) in the case of dry-cargo vessels (except Liberty type vessels) will be less than 35 per centum of the domestic war cost of vessels of the same type, (2) in the case of any Liberty type vessel will be less than $31\frac{1}{2}$ per centum of the domestic war cost of vessels of such type, or (3) in the case of a tanker will be less than 50 per centum of the domestic war cost of tankers of the same type. For the purposes of this Act, except section 5, all Liberty vessels shall be considered to be vessels of one and the same type.

(e) "Domestic war cost" as applied to any type of vessel means the average construction cost (without national defense features) as determined by the Commission, of vessels of such type delivered during the calendar year 1944, except in case of any type of vessel the principal deliveries of which were made after the calendar year 1944, there shall be used in lieu of such

year 1944 such period of not less than six consecutive calendar months as the Commission shall find to be most representative of war production costs of such type.

(f) "Cessation of hostilities" means the date proclaimed by the President as the date of the cessation of hostilities in the present war, or the date so specified in a concurrent resolution of the two Houses of the Congress, whichever is the earlier.

(g) "Citizen of the United States" includes a corporation, partnership, or association only if it is a citizen of the United States within the meaning of section 2 of the Shipping Act of 1916, as amended. The term "affiliated interest" as used in sections 9 and 10 of this Act includes any person affiliated or associated with a citizen applicant for benefits under this Act who the Commission, pursuant to rules and regulations prescribed hereunder, determines should be so included in order to carry out the policy and purposes of this Act.

(50 USC Appendix 195 ed., Sec. 1736)

Sec. 9. (a) A citizen of the United States who on the date of the enactment of this Act—

(1) owns a vessel which he purchased from the Commission prior to such date, and which was delivered by its builder after December 31, 1940; or

(2) is party to a contract with the Commission to purchase from the Commission a vessel, which has not yet been delivered to him; or

(3) owns a vessel on account of which a construction-differential subsidy was paid, or agreed to be paid, by the Commission under section 504 of the Merchant Marine Act, 1936, as amended and which was delivered by its builder after December 31, 1940; or

(4) is party to a contract with a shipbuilder for the construction for him of a vessel, which has not yet been delivered to him, and on account of which a construction-differential subsidy was agreed, prior to such date, to be paid by the Commission under section 504 of the Merchant Marine Act, 1936, as amended:

shall, except as hereinafter provided, be entitled to an adjustment in the price of such vessel under this section if he makes application therefor, in such form and manner as the Commission may prescribe, within sixty days after the date of publication of the applicable prewar domestic costs in the Federal Register under section 3(c) of this Act. No adjustment shall be made under this section in respect of any vessel the contract for the construction of which was made after September 2, 1945, under the provisions of title V (including section 504) or title VII of the Merchant Marine Act, 1936, as amended.

(b) Such adjustment shall be made as hereinafter provided, by treating the vessel as if it were being sold to the applicant on the date of the enactment of this Act, and not before that time. The amount of such adjustment shall be determined as follows:

(1) The Commission shall credit the applicant with the excess of the cash payments made upon the original purchase price of the vessel over 25 per centum of the statutory sales price of the vessel, as of such date of enactment. If such payment was less than 25 per centum of the statutory sales price of the vessel, the applicant shall pay the difference to the Commission.

(2) The applicant's indebtedness under any mortgage to the United States, with respect to the vessel shall be adjusted.

(3) The adjusted mortgage indebtedness shall be in an amount equal to the excess of the statutory

sales price of the vessel as of the date of the enactment of this Act over the sum of the cash payment retained by the United States under paragraph (1) plus the readjusted trade-in allowance (determined under paragraph (7)) with respect to any vessel exchanged by the applicant on the original purchase. The adjusted mortgage indebtedness shall be payable in equal annual installments thereafter during the remaining life of such mortgage with interest on the portion of the statutory sales price remaining unpaid at the rate of $3\frac{1}{2}$ per centum per annum.

(4) The Commission shall credit the applicant with the excess, if any, of the sum of the cash payments made by the applicant upon the original purchase price of the vessel plus the readjusted trade-in allowance (determined under paragraph 7) over the statutory sales price of the vessel as of the date of the enactment of this Act to the extent not credited under paragraph (1).

(5) The Commission shall also credit the applicant with an amount equal to interest at the rate of $3\frac{1}{2}$ per centum per annum (for the period beginning with the date of the original delivery of the vessel to the applicant and ending with the date of the enactment of this Act) on the excess of the original purchase price of the vessel over the amount of any allowance allowed by the Commission on the exchange of any vessel on such purchase; the amount of such credit first being reduced by any interest on the original mortgage indebtedness accrued up to such date of enactment and unpaid. Interest so accrued and unpaid shall be canceled.

(6) The applicant shall credit the Commission with all amounts paid by the United States to him as charter hire for use of the vessel (exclusive of service, if any, required under the terms of the charter) under any charter party made prior to the

date of the enactment of this Act, and any charter hire for use accrued up to such date of enactment and unpaid shall be canceled; and the Commission shall credit the applicant with the amount that would have been paid by the United States to the applicant as charter hire for bare-boat use of vessels exchanged by the applicant on the original purchase (for the period beginning with date on which the vessels so exchanged were delivered to the Commission and ending with the date of the enactment of this Act).

(7) The allowance made to the applicant on any vessel exchanged by him on the original purchase shall be readjusted so as to limit such allowance to the amount provided for under section 8.

(8) There shall be subtracted from the sum of the credits in favor of the Commission under the foregoing provisions of this subsection the amount of any overpayments of Federal taxes by the applicant resulting from the application of subsection (c)(1), and there shall be subtracted from the sum of the credits in favor of the applicant under the foregoing provisions of this subsection the amount of any deficiencies in Federal taxes of the applicant resulting from the application of subsection (c)(1). If, after making such subtractions, the sum of the credits in favor of the applicant exceeds the sum of the credits in favor of the Commission, such excess shall be paid by the Commission to the applicant. If, after making such subtractions, the sum of the credits in favor of the Commission exceeds the sum of the credits in favor of the applicant, such excess shall be paid by the applicant to the Commission. Upon such payment by the Commission or the applicant, such overpayments shall be treated as having been refunded and such deficiencies as having been paid.

For the purposes of this subsection, the purchase price of a vessel on account of which a construction-differential subsidy was paid or agreed to be paid under section 504 of the Merchant Marine Act, 1936, as amended, shall be the net cost of the vessel to the owner.

(c) An adjustment shall be made under this section only if the applicant enters into an agreement with the Commission binding upon the citizen applicant and any affiliated interest to the effect, that—

(1) depreciation and amortization allowed or allowable with respect to the vessel up to the date of the enactment of this Act for Federal tax purposes shall be treated as not having been allowable; amounts credited to the Commission under subsection (b) (6) shall be treated for Federal tax purposes as not having been received or accrued as income; amounts credited to the applicant under subsection (b) (5) and (6) shall be treated for Federal tax purposes as having been received and accrued as income in the taxable year in which falls the date of the enactment of this Act;

(2) [As amended Act of August 6, 1956, c. 1013, 70 Stat. 1068] the liability of the United States for use (exclusive of service, if any, required under the terms of the charter) of the vessel on or after the date of the enactment of this Act under any charter party shall not exceed 15 per centum per annum of the statutory sales price of the vessel as of such date of enactment; and the liability of the United States under any such charter party for loss of the vessel shall be determined on the basis of the statutory sales price as of the date of the enactment of this Act, depreciated to the date of loss at the rate of 5 per centum per annum: *Provided*, That the provisions of this subsection (c) (2) shall not apply to

any such charter party executed on or after the date of enactment of this amendatory proviso; and the Secretary of Commerce is directed to modify any adjustment agreement to the extent necessary to conform to the provisions of this amendatory proviso; and

(3) in the event the United States, prior to the termination of the existing national emergency declared by the President on May 27, 1941, uses such vessel pursuant to a taking, or pursuant to a bareboat charter made, on or after the date of the enactment of this Act, the compensation to be paid to the purchaser, his receivers, and trustees, shall in no event be greater than 15 per centum per annum of the statutory sales price as of such date.

(d) Section 506 of the Merchant Marine Act, 1936, as amended, shall not apply with respect to (1) any vessel which is eligible for an adjustment under this section, or (2) any vessel described in clause (1), (2), (3), or (4) of subsection (a) of this section, the contract for the construction of which is made after September 2, 1945, and prior to the date of enactment of this Act.

(50 U. S. C. Appendix 1952 ed., Sec. 1742)

APPENDIX B.

Opinions and Judgment Below and
Related Opinions.

Opinion.

IN THE
UNITED STATES COURT OF APPEALS,
FOR THE FIFTH CIRCUIT.

No. 20040

UNITED STATES OF AMERICA,

Appellant,

versus

WATERMAN STEAMSHIP CORPORATION,

Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF ALABAMA.

(March 30, 1964.)

Before RIVES, CAMERON and HAYS,* Circuit Judges.

RIVES, Circuit Judge: This suit for refund of income taxes for the years 1947 through 1950 was tried by the district court without a jury. Pursuant to a carefully considered opinion reported as *Waterman Steamship Corporation v. United States*, 203 F. Supp. 915, the court entered judgment for the taxpayer Waterman in the total amount of \$2,241,388.30, together with interest. On appeal there is no complaint as to the rulings on the three issues which the district court captioned: "I. WATERMAN BUILDING" (203 F. Supp. 917-921), "II. BABY FLAT-TOPS" (Id. 921-925), and "IV. ALABAMA STATE TAX" (Id. 926-928). The remaining questions are: (1) whether Waterman is entitled to a foreign tax credit under

* Of the Second Circuit, sitting by designation.

section 131 of the Internal Revenue Code of 1939 for certain taxes paid to the Republic of the Philippines;¹ (2) whether the district court correctly determined Waterman's cost basis for depreciation of eighteen vessels whose sales prices were adjusted pursuant to the Merchant Ship Sales Act of 1946;² (3) whether the district court correctly held that interest paid by Waterman on Government-advanced progress payments was properly included in "the original purchase price" of eighteen vessels for purposes of the price adjustment authorized by section 9 of the Merchant Ship Sales Act of 1946.

2. Cost Basis of Vessels for Depreciation.

For the purpose of the depreciation issue the facts were also stipulated, and are fairly stated by the district court in 203 F. Supp. at 928. The difference between the amounts contended for as the proper cost basis of the vessels for depreciation is \$8,818,838.55.

The district court decided this issue in favor of the plaintiff taxpayer in line with earlier decisions in *Barber Oil Corporation v. Manning*, D. C. N. J. 1955, 135 F. Supp. 451, 458-461, and *Socony Mobil Oil Co. v. United States, Texaco, Inc. v. United States, Mississippi Shipping Co. v. United States*, Ct. Cl. 1961, 287 F. 2d 910. Later the District Court for the District of Delaware, in an extensive opinion, declined to agree with any of the earlier decisions and decided the issue in favor of the United States. *National Bulk Carriers, Inc. v. United States*, D. C. Dela. 1963, 214 F. Supp. 585.³

After careful study, we are constrained to agree with the District of Delaware, and set forth briefly the reasons which lead us to that decision. The language of the statute and its legislative history show that Congress intended pre-enactment purchases to be treated as if the sale had

¹ 14 Philippine Annotated Laws, Title 72.

² Chapter 82, 60 Stat. 41 (50 U. S. C. A. Appendix, 1952 ed., sec. 1735).

³ Attached as Appendix A to that opinion at 214 F. Supp. 597-599 is the full text of the pertinent Section 9 of the Merchant Ship Sales Act of 1946.

occurred on the date of enactment, that is, on a parity with post-enactment purchases. That is explicitly stated in the opening paragraph of section 9(b):

“(b) Such adjustment shall be made as herein-after provided, by treating the vessel as if it were being sold to the applicant on the date of the enactment of this Act, and not before that time. The amount of such adjustment shall be determined as follows:”

Of the subparagraphs which follow, some provide for a decrease in the cash down payment and mortgage indebtedness [sections 9(b)(1), (2), (3) and (4)] which would adjust the purchase price to conform to the statutory sales price provided by section 3(d)(4). Other subparagraphs provide for adjustments which compensate the purchaser for his investment [section 9(b)(5)], restore charter hire paid or that should have been paid [section 9(b)(6)], and return taxes and tax benefits due to pre-enactment ownership [sections 9(b)(8) and 9(c)(1)]. Those items, which are not capital in nature, do not enter into the computation of cost for purposes of depreciation.

The legislative history of section 9 is set forth at some length in the opinion of the Delaware District Court in 214 F. Supp. at pp. 591-593 and leads to the same conclusion. It was clearly the intention of Congress to put pre-enactment purchasers and post-enactment purchasers on the same basis, that of the statutory sales price.

CAMERON, Circuit Judge, concurring in part and, in part, dissenting:

The decision of the majority of the items designated “1. Foreign Tax Credit Issue” and “3. Interest on Progress Payments” accords with my own views, and in the decision on these issues I concur. The holding of the majority on the issue designated “2. Cost Basis of Vessels for Depreciation” goes so far afield of my own view that I am constrained to state my views in a brief dissent.

Admittedly, there is no clear statutory authority for the decision of the majority that Appellee's basis for depreciation of the vessels which form the subject of this litigation must be reduced by the \$8,818,839.55 in dispute, which amount represents reductions in the *additional* amount of the cost of said vessels to be paid under the purchase contracts as originally executed. The majority appears to adopt the conclusion of the District Court of Delaware in *National Bulk Carriers, Inc. v. United States*, D. C. Dela. 1963, 214 F. Supp. 585. That court, basing its holding solely upon its reading of the legislative history of Section 9 of the Merchant Ship Sales Act of 1946, 50 U. S. C., Appendix, 1952 ed., Sec. 1735 states as its conclusion:

"A decision for the taxpayer would be contrary to the equitable principles that motivated the Congress to act. A larger depreciation basis for war-time buyers for the same class of ships would give them a substantial competitive advantage over similar (sic) situated post war buyers. With the language and the background of the legislation in mind, the government must prevail." 214 F. Supp. at page 593.

The legislative history of this statute does not, in my opinion, support this conclusion. Indeed, the Chief Judge of the District Court himself recognized the uncertain area into which his opinion ventured when, in the paragraph preceding that above quoted, he said:

"It is for the Supreme Court or Congress to conclusively determine this problem." Ibid. at page 593.

I find no such uncertainty or obscurity in the congressional intent on the point in issue. The basis of property for the purpose of computing depreciation is determined by statute, §113 (a), Internal Revenue Code of 1939, 26 U. S. C.:

"The basis of property shall be the cost of such property; except that—"

There follow in subsections (1) through (23) enumerated exceptions to the quoted rule, none of which even remotely touches upon this problem.

"These and the other provisions upon which they depend create exceptions to a general rule and should not be extended by implication or otherwise to situations not expressly provided for." Referring to predecessors to §§113 (a) (1), *et seq.*) *National Bank*, 29 BTA 530.

When Congress intended that its acts authorizing the redetermination of the price of ships purchased under our various subsidized ship procurement programs would also determine the basis of property in a manner differing from §113 (a), *supra*, or would determine other factors affecting income tax liability of purchasers, it has always said so specifically.¹

¹ For example, §510 of the Merchant Marine Act of 1936 (46 U. S. C. 1160(e)):

"No gain shall be recognized to the owner for the purpose of Federal income taxes in the case of a transfer of an obsolete vessel to the Federal Maritime Board or Secretary of Commerce under the provisions of this section. The basis for gain or loss upon a sale or exchange and for depreciation under the applicable Federal income-tax laws of a new vessel acquired as contemplated in this section shall be the same as the basis of the obsolete vessel or vessels exchanged for credit upon the acquisition of such new vessel, increased in the amount of the cost of such vessel (other than the cost represented by such obsolete vessel or vessels) and decreased in the amount of loss recognized upon such transfer."

And §510 of that Act (46 U. S. C. 1161):

"The basis for determining gain or loss and for depreciation, for the purposes of Federal income or excess profits taxes, of any new vessel constructed, reconstructed, reconditioned, or acquired by the taxpayer, or with respect to which purchase-money indebtedness is liquidated as provided in subsection (g) of this section, in whole or in part out of the construction reserve fund shall be reduced by that portion of the deposits in the fund expended in the construction, reconstruction, reconditioning, acquisition, or liquidation of purchase-money indebtedness of the new vessel which represents gain not recognized for tax purposes under subsection (e) of this section."

§9(b)(8) of the Merchant Ship Sales Act of 1946, *supra*, (the statute construed by the majority opinion to support its conclusion), specifies how the income tax effect of its re-framing of the purchase price shall be treated:

"There shall be subtracted from the sum of the credits in favor of the Commission under the foregoing provisions of this subsection the amount of any overpayments of Federal taxes by the applicant resulting from the application of subsection (c) (1), and there shall be subtracted from the sum of the credits in favor of the applicant under the foregoing provisions of this subsection the amount of any deficiencies in Federal taxes of the applicant resulting from the application of subsection (c) (1). If, after making such subtractions, the sum of the credits in favor of the applicant exceeds the sum of the credits in favor of the Commission, such excess shall be paid by the Commission to the applicant. If, after making such subtractions, the sum of the credits in favor of the Commission exceeds the sum of the credits in favor of the applicant, such excess shall be paid by the applicant to the Commission. Upon such payment by the Commission or the applicant, such overpayments shall be treated as having been refunded and such deficiencies as having been paid."

It seems, therefore, abundantly clear that Congress has uniformly spelled out any exception to the rule of §113(a), *supra*, which it intended to apply.

On the point here in issue, the House of Representatives did consider a bill which would have provided specifically such an exception, and the result Appellant seeks (see H. R. 3603, 79th Congress, 1st Session), which was not passed. The Senate likewise considered, and indeed enacted a bill including as §9(e)(1) thereof a provision which also would have produced this result. It provided:

"If an adjustment in the purchase price of a vessel is made under this Section, the income and

excess profits taxes of the vessel owner under the Internal Revenue Code for the taxable year within which the delivery of the vessel was made to the purchaser and for *subsequent taxable years*, shall be redetermined. For such purposes of redetermination *the vessel shall be considered as having been acquired at the adjusted purchase price*, and the income and deductions attributable to such vessel shall be determined as if this Section had been in effect on the date of such delivery." [Emphasis added.] See consideration of H. R. 3603, 79th Congress, 1st Session in the Senate, December 4, 1945 (Legislative day October 29, 1945).

However, in conference, this provision was eliminated, and the statute we are here considering was approved (See House Conference Report No. 1526, 79th Congress, 2nd Session, to accompany H. R. 3603, dated February 6, 1946) and subsequently enacted by both Houses as the Merchant Sales Act of 1946, *supra*.

Moreover, when the executive branch, acting by and through the Commissioner of Internal Revenue of the Treasury Department, undertook to write in by administrative action that which Congress had refused to enact, in Mimeograph 6366, 1949-1 C. B. 270, the 81st Congress, in H. R. 3419, passed by both Houses but vetoed by President Truman (see 96 Cong. Rep. P. p. 15, 79102), enacted a bill which provided the precise treatment here sought by Appellee.

I do not agree with the District Court of Delaware (in 214 F. Supp. page 593) that "... these statements are entitled to little or no weight" because of the holding of *Fogarty v. United States*, 340 U. S. 8. Here we have no effort of a much later Congress to supplant the views of its predecessor; but, to the contrary, the second Congress following, expressing itself through the *same* committees, supporting and implementing the act of the earlier Congress. It is difficult to conceive of a clearer exposition of legislative intent than the sum of the foregoing actions.

The Congress manifestly intends that §113(a), *supra*, shall be applied to determine the basis of these vessels; that the basis is "the cost of such property."

The word "cost" used in this context has a clear meaning:

"The amount in value paid, charged, or engaged to be paid for anything bought or taken in barter."

Webster's new Twentieth Century Dictionary, Standard Reference Works, 1956 Edition.

It is undisputed in this record that Appellee had paid in cash \$16,235,446.21, on account of the purchase price of the subject vessels, prior to the redetermination of its price (R. 75, 83); that the Adjusted Basis of vessels traded in thereon was \$175,876.40 (R. 75, 83); that Appellee paid the additional sum of \$86,037.70 upon settlement of the adjusted price (R. 84), and that the mortgage debt to be paid thereon, after crediting thereto all adjustments, including the \$8,818,838.55 here in controversy, was \$10,182,779.04 (R. 79). The total paid or to be paid for these vessels is therefore \$26,680,139.35. This is the "cost" and this is the basis under §113(a), *supra*.

When the foregoing is considered together with the comprehensively documented opinion of the Court of Claims in *Socony Mobil Oil Co., Inc., et al. v. United States*, 287 F. 2d 910, the decision of the District Court of New Jersey in *Barber Oil Corporation v. Manning*, 135 F. Supp. 451, and Judge Thomas' carefully considered opinion in this action below, a decision for Appellee appears absolutely compelled.

Therefore, believing that to hold otherwise represents a clear departure from the legislature's plainly express intention, I respectfully dissent from the majority's holding as to point 2, "Cost Basis of Vessels for Depreciation."

Judgment.

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT.

OCTOBER TERM, 1963.

No. 20040.

D. C. DOCKET No.

UNITED STATES OF AMERICA,
Appellant,
versus

WATERMAN STEAMSHIP CORPORATION,
Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF ALABAMA.

Before RIVES, CAMERON and HAYS*, Circuit Judges.

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Alabama, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, reversed; and that this cause be, and it is hereby remanded to the said District Court for further proceedings consistent with the opinion of this Court.

"Cameron, Circuit Judge, Concurs in Part and Dissents in Part."

March 30, 1964

* Of the Second Circuit, sitting by designation.

Issued as Mandate: May 13, 1964.

**Opinion With Findings of Fact and
Conclusions of Law.**

IN THE
UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA,
SOUTHERN DIVISION.

CIVIL ACTION No. 2284.

WATERMAN STEAMSHIP CORPORATION,
Plaintiff,

vs.

UNITED STATES OF AMERICA,
Defendant.

This action arises under the provisions of Sections 1346 (a) (1) and 1402, of Title 28, of the United States Code.

Plaintiff is seeking recovery for alleged overpayment of federal income taxes for the years 1947 through 1950, in an amount of \$2,811,773.29. There are five major issues raised by the plaintiff's four claims, and one major issue raised by the Government's counter-claim. Each of these issues will be discussed separately in this opinion.

This opinion does not attempt to set forth the final sum to which the parties are entitled in the various issues. Such sums are to be determined by the parties in accordance with regular accounting procedures, reflecting the views herein expressed.

• • • • •

V.

SECTION 9, DEPRECIATION

This issue raises the question as to what are the proper bases for purposes of computing depreciation during the years 1947 through 1950, under Section 113 of the Internal Revenue Code, on eighteen vessels purchased by the plaintiff prior to 1946, the purchase price of which was subsequently adjusted under the Merchant Ship Sales Act of 1946.

At various times during the years 1942 through 1946, plaintiff purchased eighteen C-2 cargo vessels from the United States Maritime Commission (hereinafter referred to as Maritime), pursuant to Section 509 of the Merchant Marine Act 1936, 49 Stat. 2000, 46 U. S. C., 1952 Ed., Sec. 1159. The total purchase price of the vessels was stipulated to be \$49,582,767.02. Of this amount \$6,449,107.02 was paid in cash, \$2,609,600.00 was paid through a trade-in allowance on four vessels, and the remaining sum of \$40,524,060.00 was secured by mortgages on the vessels. From the dates the vessels were purchased through March 7, 1946, plaintiff made cash payments totaling \$9,786,339.19 in reduction of the mortgage indebtedness, leaving a balance due on the mortgage as of March 8, 1946, of \$30,737,720.81.

As of March 7, 1946, the bases of the eighteen vessels as claimed by the plaintiff and approved by the Internal Revenue Service totaled \$47,149,043.42. These bases were agreed upon as a result of adjustments in the total purchase price to account for unrecognized gain on the four vessels traded in.

On March 8, 1946, Congress enacted the Merchant Ship Sales Act of 1946, 60 Stat. 41; 50 U. S. C. Appendix 1952 Ed., Secs. 1735-1746, (hereinafter referred to as the Act). Under Section 4, citizens of the United States were given the right to purchase from Maritime war-built vessels at the statutory sales price defined in Section (3) (d). Section 9 of the Act authorizes adjustments in purchase prices upon

application to Maritime, of certain vessels sold by Maritime to citizens of the United States prior March 8, 1946. The purpose of this section was to allow a fair adjustment in the cost of ships purchased during the inflationary war period with the cost of ships purchased under the Act. This adjustment of purchase price was to be accomplished according to the entire formula set forth in Section 9.

Plaintiff filed an application with Maritime for an adjustment in the purchase price of each of the eighteen vessels under Section 9 of the Act, and said application was approved.

On June 11, 1951, plaintiff and Maritime entered into a final agreement for a final adjustment in the price of the eighteen vessels, pursuant to Section 9 of the Act. As a result of these adjustments plaintiff's mortgage indebtedness was reduced as of March 8, 1946, by \$20,468,904.07 from \$30,737,720.81 to \$10,268,816.74. The final agreement called for plaintiff to make a cash payment of \$86,037.70 as of March 8, 1946, in further reduction of the mortgage indebtedness. This cash payment was exclusive of and in addition to any benefit to plaintiff under Section 9. Adding this sum to the Section 9 adjustments leaves a total of \$10,182,779.04 as the amount to which the original indebtedness was reduced as of March 8, 1946.

Plaintiff contends that pursuant to the provisions of Section 9 of the Act, the price of the eighteen vessels was adjusted and reduced by \$20,468,904.07, and that the cost, and therefore the basis of these vessels as of March 8, 1946 was \$26,680,139.35; and that such sum should be used for depreciation purposes. This latter figure represents the difference between the bases agreed upon by plaintiff and the Internal Revenue Service as of March 7, 1946, *supra*, and the reduction in purchase price effected as of March 8, 1946, by the agreement with Maritime on June 11, 1951.

Defendant contends that pursuant to the provisions of Section 9 of the Act, the price of the eighteen vessels was adjusted and reduced to \$17,997,981.84, *their statutory*

sales price and the price plaintiff would have had to pay for the vessels if they had been sold by Maritime to plaintiff on March 8, 1946, and not before that date.

The more than eight and a half million dollar difference between the bases as proposed by plaintiff and as proposed by the defendant Government, equals the net charter hire credits to Maritime under Section 9(b)(6), as computed under defendant's contended interpretation of Section 9(b)(6). The defendant argues that this amount is not really a part of the cost of the vessels, and should therefore be deducted from the computed sum. This same argument was raised in *Barber Oil Corp. v. Manning*, 135 F. Supp. 451, and there decided in the taxpayer's favor.

The defendant sets forth several different methods of adjusting the figures to arrive at its alleged basis. But permeating this issue is a single inquiry: For purposes of computing depreciation under Section 113 of the Internal Revenue Code, are the proper bases the statutory sales prices, as defined in Section 3(d), or the actual economic investment and cost after making the adjustment pursuant to Section 9(b)?

It seems to me that the Internal Revenue Service is attempting to create confusion in an area where Congress has been most explicit in setting forth the statutory procedure. The courts have spoken on this precise question in at least four cases, each one of which held adverse to the same contention now raised by the Government. *Barber Oil Corp.*, *supra*; *Socony Mobil Oil Company v. United States*, *Texaco, Inc. v. United States*, and *Mississippi Shipping Company, Inc. v. United States*, 287 F. 2d 910 (rehearing denied, 289 F. 2d 326).

Section 9 of the Act is not a tax statute and it does not purport to provide the tax bases of vessels whose purchase prices have been adjusted thereunder. The tax bases of the eighteen vessels must be determined under the Internal Revenue Code. Sections 23 (n) and 114 (a) thereof provide for the allowance of depreciation computed on the basis of the property as determined under Section 113. Section 113 (a)

sets forth the general rule applicable to the present case as follows: "The basis of property shall be the cost of such property . . ."

Defendant insists that it was the intention of Congress that the price effected by the adjustment be equal to the statutory sales price. This contention was well considered in *Socony Mobil Oil Co. v. United States, supra*, and there the Court of Claims, speaking through Judge Madden, made this comment:

"Neither the express terms of the statute, those terms in their context, nor the relevant legislative history indicate a legislative intent that the basis for depreciation of the ships should be an artificial, legally constructed figure different from their actual mathematically computed cost" (At 914).

It seems improbable that if Congress had intended the Section 9 adjustments to equal the statutory sales price, it would have omitted a reference in Section 9 to Section 3(d), which defines the statutory sales price. Indeed, the legislative history as discussed in *Socony Mobil Oil* indicates that this idea was considered by the drafters of the statute but dropped from the law as it now stands. The omission from the bill, as enacted, of a proposed Section 9(e)(1), which would have established the statutory sales price as the basis for tax purposes, clearly negates defendant's arguments.

I agree with plaintiff that the cost basis in the instant case can best be determined by comparing the economic cost of the vessels to the plaintiff the moment before and the moment after the Act became effective. The parties have stipulated that plaintiff's economic investment in the vessels as of March 7, 1946, was \$47,149,043.42. The parties also stipulated that as a result of section 9 adjustments the original mortgage indebtedness was reduced \$20,468,904.07. This latter sum, plus a cash payment of \$86,037.70 as of March 8, 1946, left an outstanding mortgage indebtedness of \$10,182,779.04 on March 8, 1946.

The court finds the plaintiff's economic investment in these vessels, and consequently its cost basis of the vessels as of March 8, 1946, to be \$26,680,139.35, computed as follows:

Outstanding Mortgage Indebtedness....	\$10,182,779.04
Cash Payment on March 8, 1946.....	86,037.70
Adjusted Bases of Vessels Traded In....	175,876.40
Total Cash Paid up to March 7, 1946....	<u>16,235,446.21</u>
Total economic cost to plaintiff.....	\$26,680,139.35

On September 28, 1948, plaintiff sold one of the vessels ("Warrior") which was purchased prior to 1946, and the basis of which, for depreciation, is involved in issue here. The court finds that the sum of \$26,680,139.35 is to be used by plaintiff in computing its depreciation deduction for 1947 and that part of 1948 prior to the sale of the *Warrior*, and that the sum of \$25,902,565.91 is to be used by plaintiff in computing its depreciation deduction for that portion of tax year 1948 after the sale of the *Warrior* and for the tax years 1949 and 1950.

Opinion.

IN THE
DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF DELAWARE

NATIONAL BULK CARRIERS, INC.,
Plaintiff,

v.

UNITED STATES OF AMERICA,
Defendant.

Civil Action
No. 2010.

WRIGHT, Chief Judge.

This is a timely suit for tax refund. The question presented is the proper basis for depreciation and for the computation of gain in the sale of certain vessels purchased by the plaintiff, National Bulk Carriers, from the United States Maritime Commission. The facts are stipulated and the relevant ones may be summarized as follows:

On October 6, 1944, plaintiff purchased the seagoing tank vessels "*Phaenix*" and "*Nashbulk*" from the United States Maritime Commission, and on May 24, 1945, purchased the seagoing tank vessel "*Amtank*". These purchases were made pursuant to Section 509 of the Merchant Marine Act, 1936, c. 858, 49 Stat. 1985 (46 U. S. C. 1952 ed., Sec. 1159). To acquire the three vessels, the plaintiff was required to pay the Commission the sum of \$7,707,957.12, of which \$7,692,382.00 represented the cost of the vessels to the Commission less the cost of national defense features¹ and \$15,575.12 represented interest on construction progress payments.² The sum of \$1,505,000.00 was paid from

¹ Section 509 provides that the Government pay for the cost of national defense features.

² The interest is the subject of a Government counterclaim that is discussed in the second part of this opinion.

an allowance for two vessels traded in and delivered to the Commission. Some amount was paid in cash and the balance was represented by mortgages on the three vessels. As of March 8, 1946, cash payments made by plaintiff totalled \$896,425.01 and the balance of plaintiff's mortgage indebtedness was \$5,306,550.11.

Upon delivery of the three vessels to the plaintiff, they were chartered by the Government. At various times during the charters, the Government paid charter-hire to the plaintiff. On its federal income tax returns for the years in which the charter-hire was paid, plaintiff reported the charter-hire as income and deducted depreciation for the vessels.

On March 8, 1946, Congress enacted the Merchant Ship Sales Act of 1946, c. 82, 60 Stat. 41 (50 U. S. C. Appendix 1952 ed., Sec. 1735), hereinafter referred to as "the Act." Under Section 4, citizens of the United States were given the right to purchase from the United States Maritime Commission war-built vessels at the statutory sales price defined in Section 3(d). The statutory sales price is arrived at by congressional formula ensuring a uniform sales price for each class of ships. Under Section 3(d) of the Act, the statutory sales price of the three vessels purchased by plaintiff totalled \$5,153,899.31. This is the price any applicant would have paid if he bought the same type of ships after the war. Purchasers were required to pay at the time of sale at least 25% of the statutory sales price and the balance was payable in not more than twenty equal annual installments with interest at 3½% per annum. By January 15, 1951, 843 ships had been sold under Section 4 of the Act.

Section 9³ of the Act authorizes adjustments for certain sales to citizens made prior to March 8, 1946. Plaintiff filed applications under Section 9 for an adjustment in the price of each of the three vessels purchased in 1944 and 1945. The applications were approved and an agree-

³ The full text of Section 9 appears in Appendix A of this opinion.

ment for adjustment was entered into by the plaintiff and the Commission.

Pursuant to Section 9(b)(3), plaintiff was entitled to have its mortgage indebtedness reduced by \$1,886,619.97 from \$5,306,550.11 to \$3,419,930.14. Plaintiff's trade-in allowance was reduced by \$1,059,505.66 from \$1,505,000.00 to \$445,494.34.⁴

Section 9(b) of the Act requires that certain other adjustments be made and that a net payment of cash be made by either the applicant or the Commission. There was a net credit of \$1,397,283.08 in favor of the Commission.

The adjustments which gave rise to the credit of \$1,397,283.08 were as follows:

(a) Section 9(b)(1) provides that, where the cash payments made before March 8, 1946, do not equal 25% of the statutory sales price, the purchaser shall pay to the Commission the difference between the amount so paid and 25% of the statutory sales price. For the three vessels in question, plaintiff's payments did not equal the 25% figure and plaintiff therefore owed the Commission for the three vessels the sum of \$392,049.82. Instead of the plaintiff making a separate payment of this amount, the Commission was given credits equal to this amount.

(b) Section 9(b)(5) provides that, for each vessel purchased, the purchaser be given a credit equal to interest at the rate of 3½% per annum on the original purchase price less any trade-in allowance from the date of delivery to March 8, 1946. By virtue of this provision, plaintiff was allowed credit totalling \$234,821.77.

(c) Section 9(b)(6) provides that, for each vessel purchased, the Commission be allowed a credit equal to the charter-hire paid to the purchaser for use of the vessel

⁴ The first three subsections have the effect of charging the applicant with the "statutory sales price" of the vessel allowing him a credit for the payments already made on account of the original purchase price and readjusting the amount of the trade-in allowance. Plaintiff admits that if the statute stopped there the adjusted purchase price would be the statutory sales price. See Plaintiff's brief, instant case, p. 11.

prior to March 8, 1946. By virtue of this provision, the Commission was allowed credits totalling \$1,385,985.30.

(d) Section 9(b)(6) also provides that, for each vessel purchased, the purchaser shall be allowed a credit equal to the amount that would have been paid as charter-hire for bareboat use of the vessel traded in for the period from the date the vessel traded in was delivered to the Commission to March 8, 1946. By virtue of this provision, plaintiff was allowed credits totalling \$406,440.31 for this hypothetical charter hire.

(e) Section 9(c)(1) provides that the purchaser's federal taxes be recomputed on the following assumptions:

1. Depreciation and amortization on the vessels up to March 8, 1946, was not allowable.

2. Charter hire credited to the Commission under Section 9(b)(6) was never received by the purchaser.

3. Amounts credited to the purchaser under Sections 9(b)(5) and 9(b)(6) were income for the taxable year in which falls March 8, 1946.

Recomputation of the plaintiff's taxes under this provision resulted in deficiencies of \$260,510.04. Under Section 9(b)(8), the Commission was allowed credits totalling \$260,510.04.

(f) Recapitulating, the credits were as follows:

In favor of the Commission

(a)	\$ 392,049.82	
(c)	1,385,985.30	
(e)	<u>260,510.04</u>	\$2,038,545.16

In favor of the plaintiff

(b)	\$ 234,821.77	
(d)	<u>406,440.31</u>	<u>641,262.08</u>

Net credit in favor of the
Commission

\$1,397,283.08

The plaintiff did not give the Commission a check for \$1,397,283.08 and the Commission did not give the plaintiff the \$1,886,619.97 reduction in mortgage indebtedness. Instead, plaintiff's mortgage indebtedness was reduced by \$489,336.89 from \$5,306,550.11 to \$4,817,213.22. The reduction of \$489,336.89 represents the difference between \$1,886,619.97 and \$1,397,283.28. Since March 8, 1946, plaintiff has paid the Commission amounts totalling \$4,817,213.22 in satisfaction of its mortgage indebtedness.

In computing plaintiff's income tax for the years in question,⁵ the Commissioner of Internal Revenue allowed plaintiff a deduction for depreciation on the vessels and used as a basis the statutory sales prices of the vessels adjusted for gain and loss not recognized by reason of certain statutory provisions. Plaintiff sues for tax refund on the grounds that the proper basis for depreciation is the original purchase price of the vessels reduced by the net adjustment in the mortgage made by reason of Section 9. In other words, the plaintiff contends that all the subsections of Section 9 must be considered in computing the price of the vessels. Determination of this narrow issue will dispose of the main part of this complicated suit. Several counterclaims have been filed by the Government; they will be treated after the basic problem is determined.

PLAINTIFF'S ARGUMENTS

Plaintiff's basic contention is that its depreciation figure actually represents the dollar amount invested in the ships. It notes that if Section 9 had not been passed the cost of the ships would have been \$6,600,000. Under Section 9 a net credit of \$489,000 was allowed; therefore the cost and necessarily the basis for depreciation is roundly \$6,110,000. This figure was the amount paid to the Government.

Plaintiff relies on the plain meaning of the statute, arguing that the words are clear and unambiguous in providing that all of the items were to be used in determining the amount of the adjustment in price. Specifically

⁵ The years in issue are 1946-50, 1952, 1953 and 1955.

alluded to are the words "the amount of such adjustment shall be determined" by and the listing of the credits and debits thereafter without an attempt to differentiate their impact. To accept the Government's position would be to disregard Sections 9(b)(4)-9(b)(8), it is concluded.

While it is argued that the statute is clear on its face, plaintiff also contends that the legislative history supports its position. Counsel rely on two subsequent declarations of intent which were appended to House⁶ and Senate⁷ reports recommending an amendment to Section 9 that encompassed the taxpayer's position. Each of these declarations stated that it had been Congress' intent that all of the subsections were to be considered in reaching a depreciation figure.

Finally, it is argued that the fallaciousness of the Government's position is amply borne out by the five cases⁸ that previously rejected the contentions of the United States, as well as the Commission's acceptance of plaintiff's position.⁹ Attention is drawn to the statement by one district judge who said "that the Internal Revenue Service is attempting to create confusion in an area where Congress has been most explicit in setting forth the statutory procedure."¹⁰

⁶ H. R. Rep. No. 1342, 81st Cong., 1st Sess. (1950).

⁷ S. Rep. No. 1915, 81st Cong., 2d Sess. (1950).

⁸ *Waterman Steamship Corp. v. United States*, 62-1, U. S. T. C. 9379 (D. Ala. 1962); *Socony Mobil Oil Co. v. United States*, 287 F. 2d 1910 (Ct. Cls. 1961) (one opinion covered all 3 Ct. of Cls. cases); *Texaco, Inc. v. United States*, 287 F. 2d 910 (Ct. Cls. 1961); *Mississippi Shipping Co. v. United States*, 287 F. 2d (Ct. Cls. 1961); *Barber Oil Corp. v. Manning*, 135 F. Supp. 451 (D. N. J. 1955).

⁹ A letter from the Maritime Commission to the plaintiff stated:

"On August 6, 1951, the Deputy Maritime Administrator approved your application for an *adjustment*, under the Merchant Ship Sales Act of 1946, in the prices of the vessels * * *. If the *adjustment* as so approved is acceptable to you in full settlement of all claims by you or on your behalf in respect of the purchase prices of the above vessels, please countersign * * *." (Italics supplied.)

¹⁰ *Waterman Steamship Corp. v. United States*, note 8 *supra*, at p. 84,062.

DEFENDANT'S ARGUMENTS.

The United States asserts that the Act as a whole was passed to ensure uniform sales prices for ships of the same class. Congress thought price uniformity would be conducive to the orderly disposition of the war-time fleet consistent with maintaining the economic standards of the Merchant Marine. With this background, the Internal Revenue Service argues that a literal reading of Section 9 and its legislative history conclusively demonstrate that Congress intended the pre-war contract prices to be reduced to the statutory sales price. This is accomplished by Sections 9(b)(1)-9(b)(3). The Government concludes that Congress' intent in passing the other subsections was to eliminate the benefits and detriments of pre-enactment ownership. And, that the legislative body never intended to treat all of the debits and credits as payment for the vessels in question.

The United States also asserts that the taxpayer's interpretation of Section 9 leads to a double tax benefit with reference to the charter hire. It reasons this way. The first benefit arises from the refund of the income tax on the charter hire. Capitalizing the charter hire for purposes of depreciation would be the second benefit. Since double tax benefits are frowned upon,¹¹ the Government argues that its interpretation is compelled.¹²

LAW AND DECISION.

It is undisputed that cost is the basis for depreciation under the Internal Revenue Code. The problem raised by

¹¹ The Bureau relies on *Detroit Edison Co. v. Commissioner*, 319 U. S. 98 (1943).

¹² Other arguments made by the Government include (1) that a return of a charter hire is like the return by a Government contractor under the federal renegotiation statutes, (2) the return of charter hire was not a payment by the taxpayer because the funds were not derived from the taxpayer's capital but from the Government's, (3) if the return of charter hire is includible in cost then its prior receipt would be considered an offset to cost, and (4) if the return of charter hire were included in depreciation basis, there would be absurd results.

the case at hand involves the effect of the intent of Congress as expressed by a statute passed to deal with a specific problem on the ordinary rules of depreciation formulated under the Internal Revenue Act. Before solution is attempted, it seems appropriate to note the court's role when faced with problems of statutory construction.

The fundamental goal of judicial construction is the application of the law in the spirit of the basic policy which motivated the Congress to act. To attain this objective, certain principles of construction have been developed by the Supreme Court and the lower federal courts. Where the statute is plain and unambiguous a court may not refer to the legislative history of a bill.¹³ But, when a statute is ambiguous courts need not limit their search to sources embodied in the Act.¹⁴ Extrinsic aids such as reports of committees, statements made at hearings or during the course of floor debate and similar material may be used to glean the legislature's intent.¹⁵

Section 9 is sufficiently unclear to justify resort to legislative history. This is not to say that the plaintiff's basic argument—the statute cannot be read literally to differentiate the legal impact of some subsections from the others—does not have merit. It does to the extent Congress did not specifically state in headings that 9(b)(1)—9(b)(3) shall effect the change in price and the other subsections are to eliminate the benefits and detriments of pre-enactment ownership and are irrelevant to cost. There is room to read Section 9 as one indivisible formula. However, there is ample, if not overwhelming, support for the position of the United States in the language of the statute.

¹³ See e.g., *Ex parte Collett*, 337 U. S. 55 (1949); *United States v. Rice*, 327 U. S. 742 (1946). See generally, Frank, *Words and Music: Some Remarks on Statutory Interpretation*, 47 *Colum. L. Rev.* 1259 (1947).

¹⁴ E.g., *ICC v. Parker*, 326 U. S. 60 (1945); *NLRB v. Hearst, Inc.*, 322 U. S. 111 (1944); Cohen, *The Value of Value Symbols in the Law*, 52 *Colum. L. Rev.* 893 (1952).

¹⁵ For a full discussion of the importance of each type of extrinsic aid, see 2 Sutherland, *Statutory Construction*, §§5001-5016 (Horack ed. 1943).

Subsection (b) states that "[S]uch adjustment shall be made . . . by treating the vessel as if it were being sold to the applicant on the date of the enactment of the Act, and not before that time." If the ships were sold on the date of enactment their cost would have been the statutory sales price. The latter would necessarily have been the basis for depreciation. This language introduces and is the framework of the adjustment provisions. It forcibly suggests that Congress intended all ships of the same class to be depreciated on the same basis without reference to date of purchase.

It is agreed by the parties that the application of Sections 9(b)(1)-9(b)(3) would reduce the original contract price to the statutory sales price. The problem arises from the fact that Congress did not stop there; it provided for further adjustment. While the legislature has not interlined any distinguishing language between those sections that bring the contract price down to the statutory sales price and the other sections, a close reading suggests that the legislature may have had some distinction in mind. Section 9(b)(3) involves the situation where the purchaser only makes part payment and owes the balance. It says apply certain adjustments to the mortgage, the net effect of which is to charge the applicant with the statutory sales price. The section says the amount of "the adjusted mortgage indebtedness shall be" This is somewhat different from 9(b)(5) and 9(b)(6) which start out the parties' ". . . shall credit" These sections look to the immediate exchange of cash after all the credits and debits have been added; Congress has so provided. The two different modes of adjustment suggest that Congress contemplated two severable transactions.¹⁶ If the legislature intended that all the adjustments be considered part

¹⁶ Section 9(b)(4) applies when the applicant has paid in cash more than the statutory sales price. Then, unlike 9(b)(3), the adjustment is made by means of a credit. However, this would not seem to subvert the above argument because here Congress has no practical, alternative means of adjustment.

of cost, it would have been logical to provide that all adjustments be applied first to the mortgage indebtedness.¹⁷

In support of the Government's position, several other arguments may be drawn from the text of the statute. The theory that Congress provided one individual formula is inconsistent with the fact that there are several different modes of adjustment. Under Section 9(c)(2) the Government's liability for the loss of a vessel adjusted under Section 9 and chartered to the Government is limited to the statutory sales price depreciated to the date of loss. If the new price is not the statutory sales price, this provision is without meaning. Finally, it should be noted that the caption of the section does not include the phrase "price adjustment" as reported in U. S. C. In the official statute the broader phrase "adjustment for prior sales to citizens" is used.¹⁸

The presence of logical arguments supporting two interpretations of the same language compel the conclusion that the statute is ambiguous. Guidance must be sought in the legislative history of the Act, if construction of the statute is to be consistent with the legislative intent.

At the outset, it is important to take a broad view of the Act as a whole. During World War II the United States had accumulated a vast fleet of cargo carriers and at War's end it became necessary to dispose of these ships.¹⁹ The legislature's objectives were twofold: to dispose of the fleet in an orderly fashion and at the same time maintain a vigorous and healthy Merchant Marine.²⁰ Ruinous competition was feared. Congress sought to obtain its basic goals through the implementation of a firm pricing

¹⁷ It should be noted that the Commission, in this case, actually applied all the adjustments against the mortgage. This is conceded to be erroneous and contrary to the statute.

¹⁸ See 60 Stat. 46.

¹⁹ See S. Rep. No. 807, 79th Cong., 1st Sess., 1-2 (1945); H. R. Rep. No. 831, 79th Cong., 1st Sess., pp. 1-2 (1945). See also *American President Lines v. United States*, 162 F. Supp. 732 (D. Del. 1958).

²⁰ *Ibid.*

policy for the sale of war-built vessels and the establishment of an inactive merchant vessel reserve promptly available for security needs, but frozen so far as commercial use is concerned.²¹

After studying the legislative history of Section 9, one inescapable conclusion concerning legislative intent appears. Congress meant to put pre-Act and post-war purchasers on exactly the same basis—their shoes were to be interchangeable. Using this fact as a major premise it becomes clear that all buyers were to pay one price, the statutory sales price. This conclusion is supported directly as well as inferentially by the legislative history. It is entirely consistent with the Act's general goals which encompass a firm pricing policy.²²

Section 9, as enacted, can be traced to a floor amendment offered by Representative Jackson, chairman of the subcommittee in charge of amendments to the bill.²³ The day before it was offered the purpose of the amendment was explained. Mr. Jackson said:

"Section 9 of HR 3603 provides for a refund to operators who purchased vessels during the war, at war cost, back to the statutory sales price contained in section 3 of the Act. Such an adjustment is fair. We do not want to place the wartime purchaser at a disadvantage with his competitor who acquires a similar vessel under the provisions of this bill.

"However, section 9 contains many loopholes which in my opinion places the wartime purchaser in a far better position than future purchasers.

²¹ See S. Rep. No. 807, 79th Cong., 1st Sess., p. 1. (1945).

²² If the general goal of the Act involves firm prices, to allow purchasers of the same type of vessel to have different basis for depreciation would be to subvert the basic objective.

²³ See 91 Cong. Rec. 9182 (1946). While the use of floor debates to determine legislative intent is not looked on with favor, an exception is made for the chairman in charge of the bill. His statements are in the nature of supplemental committee reports and are entitled to the same weight. See 2 Sutherland, op. cit., at §§5011-12.

For one thing, the wartime purchaser, under section 9, would be allowed trade-in allowances far in excess of those provided under the committee amendment to section 8.

"If there is to be equality between the past and future purchasers there must be comparable terms and nothing less. * * * I have proposed certain modifications to section 9 of H. R. 3603 which has been accepted as a committee amendment. *The effect of this amendment is to treat prior sales as having taken place on the date of the enactment of this bill.* The operator is compensated for all actual money investment to date by an allowance of 3½% interest thereon."²⁴ (Emphasis supplied.)

No clearer statement in support of the Government's position could be made. Yet, sole reliance need not be placed on it. The same theme runs throughout the House debates.²⁵

The House²⁶ and Senate²⁷ reports which were made before the proffer of the amendment, and the subsequent conference report²⁸ are entirely consistent with and in support of the main thesis of the House debates. They

²⁴ See 91 Cong. Rec. 9182-9185 (1946).

²⁵ *E.g.*, at page 9282, Mr. Jackson stated: "The committee amendment treats all of these prior sales as being made on the date of the bill's enactment and not before that time, so that the previous purchaser and a future purchaser will be put on exactly the same basis. In order to accomplish this result it is necessary to unwind a previous transaction, and most of the provisions which appear complicated, are the provisions describing how this unwinding is done."

At page 9284, Mr. Bradley stated: "The purpose of the amendment is to put everybody on the same basis as of the date of the enactment of the legislation." See generally 9281-9284. There is some contrary authority. Mr. Buck denominated the amendment as "a shot in the dark", and opposed on the grounds that adoption of the amendment would be acting without knowledge.

²⁶ H. Rep. No. 831, 79th Cong., (1945).

²⁷ S. Rep. No. 807, 79th Cong., 1st Sess. (1945).

²⁸ H. Conference Rep. No. 1526, 79th Cong., 2d Sess. (1945).

demonstrate that the Congress intended to reduce the original contract price to the statutory sales price and to eliminate the benefits and detriments of pre-enactment ownership with other adjustments.

The Senate emphasized the need for a firm pricing policy. The report stated: "[U]nless adjustments were made in connection with these prior sales to conform to the selling price prescribed in the bill, there would be strong likelihood of breaking down or attempts to break down the firm pricing policy on the ground that the failure to make such adjustment would be unwarranted discrimination against earlier purchasers."²⁹

The Senate adjustment equaled the excess of the original purchase price (depreciated at a certain rate) over the statutory sales price as of the date of enactment.³⁰ Conditions on the adjustment rather than parts of the whole, included return of a portion of the charter hire.

The House report also emphasized the need for a firm pricing policy and stated with clarity the effect of its version of Section 9 which was eventually amended. It said: "the effect of making the adjustment is the same as if the bill had been enacted at the beginning of the war period and *all sales during the war period had been at the statutory sales price.*"³¹ Conditions for receiving the adjustment involved treating the sale for all purposes as if it were made under the bill; thus, for example, a portion of the charter hire had to be returned. The logical conclusion to be drawn from both the House and Senate reports is that at all times, the Congress had only one idea in mind—to treat the Section 9 applicants as if they purchased on the date the Act was passed.

The basic difference between the House bill and the final Senate version are set forth in the conference report. To be noted, however is the recognition in the report that both versions provided for "(1) adjustment of the original

²⁹ S. Rep. at p. 19.

³⁰ *Ibid.*

³¹ H. Rep. at p. 12.

purchase price, (2) adjustment of the charter hire, (3) adjustment of trade-in allowance in connection with the prior original purchase, and (4) adjustments of taxes paid on account of ownership in the vessel.³² Neither House had urged one indivisible formula of adjustment; both Houses treated the adjustment in purchase price as one complete and severable transaction.³³

In the face of this clear and persuasive legislative history, plaintiff argues that the Congressional intent, as evidenced by subsequent reports of the 81st Congress,³⁴ supports its position. There can be no doubt that these reports unequivocally state that it had been the intent of the 79th Congress to include all adjustments in the depreciation base. However, these statements are entitled to little or no weight. In *Fogarty v. United States*,³⁵ the Supreme Court said that "[I]f there is anything in these subsequent events at odds with our finding of the meaning of Section 3, it would not supplant the contemporaneous intent of the Congress which enacted the Lucas Act." This principle is dispositive of the plaintiff's contention.³⁶

Because of the strength of the legislative history and the support found in the language of Section 9, this court, in a case of first impression, would unhesitatingly rule for the Government. However, three lower federal courts have reached the opposite result,³⁷ and it is thus contended

³² H. Conference Rep. at p. 17.

³³ The House bill was explained on the same basis as always i.e., it treats all purchasers as if they bought on the day of enactment—and the conference agreement restored the House provisions. H. Conf. Rep. at p. 17.

³⁴ S. Rep. No. 1915, 81st Cong., 2d Sess. (1950); H. R. Rep. No. 1342, 81st Cong., 1st Sess. (1950).

³⁵ 340 U. S. 8 (1950).

³⁶ This court is cognizant of the rule of the Sioux Indian case—i.e., a subsequent expression of opinion as to the meaning of a statute by the same committee which had considered that statute is an important circumstance in interpreting the statute. *Sioux Tribe v. United States*, 316 U. S. 317 (1942). However, *Fogarty* was decided after the *Sioux Tribe* case and therefore the former must be followed.

³⁷ See cases noted 8, *supra*.

that principles of stare decisis and uniformity justify decision for the plaintiff. This argument must be rejected. All three cases were decided by different courts of co-ordinate level. The two district courts did not deal with the problem in extenso and decided the cases on different grounds from the ones set out in this opinion.³⁸ The Court of Claims did go into the legislative history, but the Court respectfully differs on the conclusions to be drawn concerning the intent of the legislation.³⁹ It is for the Supreme Court or Congress to conclusively determine this problem.

A decision for the taxpayer would be contrary to the equitable principles that motivated the Congress to act. A larger depreciation basis for war-time buyers of the same class of ships would give them a substantial competitive advantage over similar situated, post-war buyers.⁴⁰ With the language and the background of the legislation in mind, the Government must prevail.

³⁸ The basic reasoning in *Barber Oil* was that the refund of charter hire was "not actually paid to the Commission by the plaintiff and it would be mathematically erroneous to subtract it from plaintiff's payments." 135 F. Supp. at 460. In *Waterman*, the court reasoned that the "economic cost" must be the taxpayer's basis under the code. See 62-1 U. S. TC. at 84,062-63.

³⁹ The Court of Claims noted that if the Senate bill had passed, the Government's position would be correct. But, since the House bill was enacted the Government's view had to be rejected. See 287 F. 2d at 913-14.

⁴⁰ It should be noted that under 9(b)(5) pre-Act purchasers are fully compensated for their war-time investment. This was the keystone to putting all buyers on exactly the same basis.

Opinion of the Court.

(Filed May 8, 1964.)

**UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT.**

No. 14,483.

NATIONAL BULK CARRIERS, INC.,
Appellant,
v.

UNITED STATES OF AMERICA,

No. 14,484.

NATIONAL BULK CARRIERS, INC.,
v.

UNITED STATES OF AMERICA,
Appellant.

ON APPEALS FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE.

Argued December 5, 1963.

Before STALEY, GANEY and SMITH, *Circuit Judges.*

By STALEY, Circuit Judge.

The primary question posed by these appeals is whether the district court correctly determined the cost basis for tax purposes of three vessels purchased by the plaintiff

from the United States, the prices of which were adjusted pursuant to the Merchant Ship Sales Act of 1946, 50 U. S. C. Appendix §§1735-1746 (1958 ed.). The district court held that the cost basis of these vessels is their "statutory sales price" as computed under the Act, rejecting the plaintiff's contention that all of the adjustments and credits referred to in §9(b) of the statute, 50 U. S. C. Appendix §1742, must be applied to determine the proper cost basis. 214 F. Supp. 585 (D. Del. 1963).

The operative facts have been stipulated and are fully summarized in the opinion of the district court. Accordingly, they will be repeated here only in such brief outline form as is essential to a determination of the issues raised in this court.

The plaintiff purchased the vessels in question during the Second World at a price of \$7,707,957.12.¹ A portion of this price was paid from an allowance for two vessels traded in at the time of the purchases. The new vessels were then chartered by the Government, and on its Federal tax returns plaintiff reported this charter-hire as income for the years in which it was received, in addition to making depreciation deductions for the vessels. Following the enactment of the Merchant Ship Sales Act of 1946, the plaintiff applied for a price adjustment under §9 of the statute.

The adjusted "statutory sales price" of the three vessels as computed in accordance with §3(d) was \$5,107,796.02.² Accordingly, under §9(b)(3), the outstanding mortgage indebtedness was reduced by \$1,886,619.97. However, §9(b) provides for additional adjustments, more fully discussed later in this opinion, including a credit to the Maritime Commission for all amounts of charter hire

¹ This amount includes \$15,575.12 representing interest on construction progress payments. The Government's counterclaim for the latter amount is treated later in this opinion.

² This amount represents the statutory sales price of the vessels, \$5,153,899.31, adjusted for gain and loss not recognized by §510(e) of the Merchant Marine Act of 1936, 46 U. S. C. §1160(e). (1958 ed.).

paid for the use of the vessels prior to the date of the Act, a credit to the applicant for charter-hire he would have received for the use of any vessel traded in at the time of the original purchase, and a recomputation of Federal tax liability based on these adjustments. These additional adjustments resulted in a credit of \$1,397,283.08 in favor of the Maritime Commission. This amount was then deducted from the \$1,886,619.97 credit due the plaintiff on its mortgage indebtedness, resulting in a net reduction in mortgage indebtedness of \$489,336.89. The plaintiff then subtracted that amount from the agreed upon cost basis of the vessels as of the date of the Act, \$6,602,366.17 to arrive at \$6,113,029.28 as its cost basis under the statute. Its depreciation deductions for the tax years in question, 1946-1953 and 1955, were based on that figure.³

The United States, on the other hand, successfully contended in the plaintiff's suit for tax refund in the district court that the proper cost basis of the vessels is their adjusted "statutory sales price," \$5,107,796.02, or \$1,005,233.26 less than the figure used by the plaintiff. This judgment was premised on the view that the additional adjustments required by §9 were merely intended to eliminate the benefits and detriments of pre-enactment ownership and were not to be considered in determining the cost basis of the vessels.

Section 9(b), 50 U. S. C. Appendix §1742, contains detailed provisions for determining the amount of the price adjustment on prior sales to citizens. We think it inappropriate to set forth that section in its entirety but shall briefly summarize it. The first sentence of the section states that the adjustment in price "shall be made, as hereinafter provided, *by treating the vessel as if it were being sold to the applicant on the date of the enactment of this Act [March 8, 1946], and not before that time.* The amount of such adjustment shall be determined as follows * * *." (Emphasis supplied.) Eight comprehensive para-

³ Of course no contention is advanced that the applicability of the Internal Revenue Code of 1954 to the tax year 1955 affects the issue in this case.

graphs follow this declaration. Paragraph (1) requires an initial payment of 25% of the statutory sales price of the vessel. Any payments made upon the original purchase price in excess of that amount are credited to the applicant, and if such payments were less than that proportion of the statutory sales price the difference must be paid to the Maritime Commission. Paragraphs (2) and (3) readjust the mortgage indebtedness to an amount equal to the excess of the statutory sales price over the sum retained by the United States under Paragraph (1) plus the readjusted trade-in allowance (computed under Paragraph 7) of any vessel exchanged by the applicant on the original purchase. Thus, these three paragraphs charge the applicant with the statutory sales price of the vessel.

The credit allowed in Paragraph (4) is not applicable to the case at bar. Paragraph (5) credits the applicant with interest for the loss of his investment at the rate of 3½% per annum from the date of the original delivery of the vessel to the date of the Act. Paragraph (6) requires the applicant to credit the Maritime Commission with all amounts paid by the United States as charter hire for the use of the vessel prior to the date of the Act. Conversely, the Commission is required to credit the applicant with the amount of charter hire which would have been paid for the use of any vessel exchanged on the original purchase. Paragraph (7) provides for a readjustment of the trade-in allowance for any vessel exchanged on the original purchase. Paragraph (8) is a detailed tax provision, the effect of which is to recompute the applicant's taxes by disallowing depreciation and amortization on the new vessel for the period prior to the Act; by treating charter hire returned to the Government under Paragraph (6) as never having been received as income; and by treating the interest and charter hire credited to the applicant under Paragraphs (5) and (6) as income in the taxable year of the Act.

It will thus be seen that the statute does not specifically state which figure is to be used as the applicant's cost basis for depreciation purposes. The plaintiff asserts

that the statutory mandate stating, "the amount of the adjustment shs'l be determined as follows" coupled with the ensuing eight paragraphs is a clear indication that all of those paragraphs must be applied to determine its cost basis. The Government argues that the statute was intended to put pre- and post-enactment purchasers on the same basis by establishing a uniform "statutory sales price" for the same class of vessels, and that the provisions of §9 relied upon by the plaintiff were simply intended to effect an unwinding of the prior contract of sale.

An examination of the statutory scheme of §9 together with a study of its legislative history convinces us that the position of the Government is sound. The genesis of the legislation is found in the Committee Reports of both the House and the Senate. H.R. Rep. No. 831, 79th Cong., 1st Sess. 2-3 (1945), U.S. Code Cong. Serv., 79th Cong., 2d Sess. 1086, 1087-1088 (1946); S. Rep. No. 807, 79th Cong., 1st Sess. 1-2 (1945). These reveal a Congressional purpose to avoid the catastrophic economic conditions in the maritime industry which followed World War I when the United States disposed of its merchant vessels without prescribing the price at which they were to be sold. As a result prices declined severely, and those who had previously purchased vessels at higher prices faced bankruptcy. The method devised by Congress to avoid a recurrence of this situation after World War II was the establishment of a "statutory sales price" for each class of vessels. With regard to the plight of those who had purchased vessels at inflated prices prior to the enactment of the bill, the House Report states:

"These purchasers will suffer an unwarranted discrimination unless the price at which they purchased or agreed to purchase these vessels is adjusted to conform to the statutory sales price prescribed in the bill. There would be nothing more demoralizing to a floor price on war-built vessels than to fail to make this adjustment, even though it involves relatively large amounts of money. The effect of making the adjustment is the same as if the bill had been enacted at the beginning of the war

period and all sales during the war period had been at the statutory sales price.

"The amount of the adjustment (sec. 9) in each case is first applied to reduce any mortgage indebtedness to the Commission on the vessel, and the balance, if any, is refunded to the purchaser.

*"As a condition to receiving an adjustment under this provision of the bill, the purchaser must agree to treat the sale for all purposes as if it had been made under the bill, for the bill requires that the charter hire charged to the United States for bareboat use of the vessel since the sale must be readjusted to an amount equal to 15 percent per annum of the readjusted price. * * * These counter adjustments in favor of the United States will of course substantially lessen the gross effect of readjusting the prior sales price down to the statutory sales price provided in the bill."* (Emphasis supplied.) U.S. Code Cong. Serv., 79th Cong., 2d Sess., at 1097-1098 (1946).

The Senate Report is to the same effect. S. Rep. No. 807, 79th Cong., 1st Sess., at 19. Thus, the original bills in both the House and Senate clearly provided that the price to the pre-enactment purchaser would be the statutory sales price, but, as a condition to receiving this adjustment, counter adjustments in favor of the Government would be required.

Section 9 of the House bill was amended on the floor of that body by a committee amendment offered by Representative Jackson, chairman of the subcommittee which considered the revision. The debate on that amendment is enlightening. Before it was formally offered for consideration on the floor of the House, several committee members made statements which, like the statements in the Committee reports, indicated that pre-enactment purchasers were to be allowed an adjustment to the statutory sales price, but would be required to make counter adjustments in favor of the Government.⁴ Mr. Jackson then submitted

⁴ These statements appear at 91 Cong. Rec. 9182-9185 (1945) (remarks of Rep. Jackson); 9194 (digest of Rep. Bonner); 9196-7

the following pellucid explanation of the Committee amendment:

"There has been a feeling that the amount of the adjustment provided for in section 9 of the bill as reported is too high. The committee amendment seeks to cut down the amount of this adjustment and at the same time to be perfectly fair to all concerned—those who bought before the enactment of the bill, those who bought after the enactment of the bill, and the United States.

"The committee amendment treats all of these prior sales as being made on the date of the bill's enactment and not before that time, so that the previous purchaser and a future purchaser will be put on exactly the same basis. In order to accomplish this result it is necessary to "unwind" a previous transaction, and most of the provisions of the committee amendment which appear complicated are the provisions describing how this unwinding is to be done. [There follows a discussion of the eight paragraphs finally enacted into law.]

"These are the provisions which the amendment includes for the purpose of unwinding the previous transaction. The basic principle of the amendment is very simple—the previous transaction is to be looked upon as having taken place not when it actually did but as taking place on the date of the bill's enactment and subject to all of the bill's provisions. The amendment reduces the amount of the adjustment under section 9 substantially and is fair to all concerned." 91 Cong. Rec. at 9282 (1945).

(remarks of Rep. Hale); 9199 (remarks of Rep. McConnell). Typical of these comments were those of Rep. Hale:

"Then in section 9 of the bill we have provided that a citizen who has bought a war-built ship since December 31, 1940, may readjust the transaction in such a way that it may be deemed to have occurred at the time of the enactment of this bill. That is to say, we scale down the price which he paid to the price which he would have paid under this bill, and make corresponding adjustments with respect to charter hire, depreciation, and so on. * * * " 91 Cong. Rec. 9197.

The differences in the House and Senate bills were resolved by a Conference Committee of both houses. The relevant portion of the report of that Committee follows:

“ADJUSTMENTS OF PRIOR SALES TO CITIZENS

“Both the House bill and the Senate amendment provided for (1) adjustment of the original purchase price, (2) adjustment of the charter hire, (3) adjustment of trade-in allowances in connection with the prior original purchase, and (4) adjustments of taxes paid on account of ownership of the vessel.

“Under the House bill the owner would receive as an adjustment the difference between the statutory sales price of the vessel computed as of the date of enactment of the act and the price he originally paid for the vessel. The owner would return all charter hire previously received or allowed by the Government during his ownership of the vessel. The owner would be allowed 3½ percent interest on his original purchase price (but where there was a trade in, only on the difference between his original purchase price and the allowance under the trade in). Under the House bill where the original purchase involved the trade in of an old vessel, the trade in allowance is adjusted in accordance with the trade in standards prescribed under section 8 of the House bill (top limit of 10 percent of the war cost). The owner would be allowed charter hire on the traded in vessel.

“Under the Senate amendment the owner would receive as an adjustment the difference between the original price (depreciated at 5 percent plus 3 or 4 percent war service) and the statutory sales price for the vessel determined as of the date of enactment of the measure. Under the Senate amendment the owner would return the difference between the charter hire he received from the Government while he owned the vessel and the charter hire he would have received had the price of the vessel been the adjusted price arrived at under the act. Under the Senate

amendment the owner would receive credit for the interest he actually paid to the Government on the deferred account of his original purchase price. The Senate amendment also provides for an adjustment of the trade in allowance for a vessel traded in on the original purchase, in accordance with section 8 of the Senate amendment (which prescribes a top limit of one-third of the unadjusted statutory sales price). Under the Senate amendment no provision is made for allowance for charter hire of the traded in vessel.

"The conference agreement restores the House provisions on the points stated in the two preceding paragraphs." Conf. Rep. No. 1526, 79th Cong., 2d Sess. 17 (1946).

We think that the foregoing legislative materials and statutory scheme clearly manifest a Congressional intention to effect a rescission of the prior contract of sale and an adjustment in price to the statutory sales price. Indeed, it would be difficult to find more perspicuous language to accomplish an "annulling or abrogation or unmaking of contract and the placing of the parties to it in status quo." Black's Law Dictionary, Fourth Ed., 1951, defining "Rescission of Contract." The necessary consequence of this view of the legislation is that the district court correctly determined the cost basis of the plaintiff.⁵

The plaintiff admits that the original bills in both houses of Congress equated the adjusted price to the statutory sales price. The plaintiff argues, however, that the amendment offered on the floor of the House and subsequently enacted into law rejected this approach in favor of the "formula theory" contained in the eight paragraphs of §9. The flaw in this argument is that it is clearly based on a misreading of the legislative history. For, as we have seen, each of the original bills required additional adjust-

⁵ This disposition makes it unnecessary for us to consider the alternative argument of the Government that interest, charter hire and taxes are not capital items and therefore are not includible in a computation of cost basis.

ments in favor of the Government as a condition to receiving an adjustment in price. The purpose of the amendment was simply to provide a more equitable unwinding of the original contract of sale.⁶

The plaintiff relies on the legislative history of a subsequent bill considered by the Congress which would have provided the relief it now seeks. However, this bill failed of enactment when it was vetoed by President Truman. As the Supreme Court has stated in a similar situation, "If there is anything in these subsequent events at odds with our finding of the meaning of §3, it would not supplant the contemporaneous intent of the Congress which enacted the Lucas Act." *Fogarty v. United States*, 340 U.S. 8, 13-14 (1950).

In its brief the plaintiff asserts that three other Federal courts have held in its favor on this issue. *Socony Mobil Oil Co. v. United States*, 287 F. 2d 910 (Ct. Cls. 1961) [a consolidation of three cases]; *Barber Oil Corp. v. Manning*, 135 F. Supp. 451 (D. N. J. 1955); and *Waterman Steamship Corp. v. United States*, 203 F. Supp. 915 (S. D. Ala. 1962). Subsequent to the argument of this appeal, however, the decision in *Waterman* was reversed by the Fifth Circuit. *United States v. Waterman Steamship Corp.*, F. 2d (C. A. 5, March 30, 1964). Thus, the rule in the Third and Fifth Circuits is opposed to the view of the Court of Claims.

In sum, we are in accord with the excellent, thorough opinion of the district court with regard to each of the issues raised on these appeals.

The judgment of the district court will be affirmed.

⁶ The plaintiff also argues that under our view of the Act, it would have been in a better tax position had it not applied for an adjustment in price since its cost basis would then have been \$6,602,366.17, or \$1,494,570.15 more than the adjusted statutory sales price. The argument is that "assuming an effective tax rate of fifty per cent, the tax saving on the aforesaid amount taken as depreciation would be \$747,285.07," whereas the net adjustment was \$489,366.89. However, the plaintiff was not obliged to apply for an adjustment in price and having done so under §9, its cost basis was reduced to the adjusted statutory sales price.

APPENDIX C.

Conflicting Opinion.

IN THE UNITED STATES COURT OF CLAIMS

(Decided March 1, 1961)

Nos. 168-59 and 169-59

SOCONY MOBIL OIL COMPANY, INC.

v.

THE UNITED STATES

Nos. 49-58, 50-58, 327-58 and 328-58

TEXACO, INC. (FORMERLY THE TEXAS COMPANY)

v.

THE UNITED STATES

Nos. 187-59 and 188-59

MISSISSIPPI SHIPPING COMPANY, INC.

v.

THE UNITED STATES

MADDEN, Judge, delivered the opinion of the court:

In these three cases the facts have been stipulated by the parties. All the cases present the same question of law and this opinion will apply to all of them. There is, in the case of the Texas Company, an additional problem not

involved in the other two cases. That problem will be adverted to in due course.

The plaintiffs seek to recover Federal income taxes which they were required to pay because the Government fixed the cost basis, of ships owned by them, at a lower figure than that which the plaintiffs say was the correct figure, and thereby reduced the amount of the deduction for depreciation to which the plaintiffs claim they were entitled for the years in question.

The case of Socony Mobil Oil Company, Inc. is, in its essentials, typical of the three cases, and the facts of that case will be used in this discussion. The word plaintiff, when used without qualification, will refer to that plaintiff.

During the war years 1942, 1943, 1944, and 1945 the plaintiff bought from the United States Maritime Commission twelve ships, and paid for them a total of \$28,204,659.59, mostly in cash but partly in old ships traded in by the plaintiff to the Commission.

On March 8, 1946, the Merchant Ship Sales Act of 1946, 60 Stat. 41, 50 U. S. C. App. (1952 ed.) §1735 ff., became effective. Section 1742 of the above Code citation is section 9 of the Act, which section is important in these cases.

The 1946 Act as a whole provided for the sale by the Government of ships which had been constructed for it. It prescribed formulae for setting "statutory sales prices" at which such ships would be offered for sale. In its section 9 it provided that purchasers of ships which had been sold by the Government before March 8, 1946, could apply to the Maritime Commission for an adjustment of the price which they had paid. If the adjustment was granted, a part of the higher price which they had paid would be refunded to them.

Section 9 cited above prescribes in detail the items which were to be adjusted if a prior purchaser applied for adjustment. The section is long and complicated and will not be reprinted in this opinion. Subsection (b) of section 9 says:

Such adjustment shall be made, as hereinafter provided, by treating the vessel as if it were being sold

to the applicant on the date of the enactment of this Act, and not before that time.

The several paragraphs of subsection (b) provide for credits to be given by the Commission to the purchaser, and other credits to be given by the purchaser to the Commission, all of which credits shall enter into the adjustment. Paragraph (4) provides that the Commission shall credit the purchaser with the amount by which the price paid by the purchaser exceeded the statutory sales price set under the 1946 Act. Paragraph (5) provides that the Commission shall credit the purchaser with interest at 3½ percent per annum on the excess of the original purchase price over any trade-in allowance received, from the date of the original purchase to the date of the 1946 Act. Paragraph (6) provides that the purchaser shall credit the Commission with the amount of charter hire which the United States had paid to the purchaser for the use of the vessels between the time of the purchase and the date of the Act, and that the Commission shall credit the purchaser with the charter hire which the United States would have paid for the use of the traded-in ships for the same period.

Paragraph (8) provides that there shall be deducted from the charter hire credits in favor of the Commission the amount of Federal taxes paid by the purchaser upon the charter hire received from the Government but now credited back to the Government pursuant to paragraph (6). It also provides that there shall be deducted from the credits in favor of the purchaser the amounts by which the purchaser's Federal taxes have been reduced, during the interim period, by taking deductions for depreciation and amortization on the ships. The specific provision about such interim depreciation and amortization is in subsection (c)(1) of section 9.

Subsection (b)(8) says:

If, after making such subtractions, the sum of the credits in favor of the applicant exceeds the sum of the credits in favor of the Commission, such excess shall be paid by the Commission to the applicant.

In the case under discussion, that of Socony Mobil Oil Company, the computation based upon the respective credits in favor of the plaintiff and the Commission showed a net credit in favor of the plaintiff of \$4,615,243.23, which sum the Commission paid to the plaintiff.

These cases, as we said at the outset, require us to determine the correct basis on which the plaintiffs were entitled to compute depreciation, for the tax years in question, upon the ships bought by them from the Maritime Commission before the enactment of the Merchant Ship Sales Act of 1946, the price of which ships was readjusted pursuant to the provisions of section 9 of that Act.

The Government's contention is that the basis of the ships is their "statutory sales price" as set by the 1946 Act. If a person who had bought no ships from the Commission before March 8, 1946 had bought these ships from the Commission after that date, he would have paid the statutory sales price for them, and that would have been his cost and his basis for depreciation. If these plaintiffs, having bought the ships in question before 1946, had decided not to apply for a readjustment of their prior purchases, which they were permitted to do by section 9 of the Act, but to leave the prior transaction undisturbed and to buy some additional ships at the reduced prices of the 1946 Act, they would have paid the statutory sales prices for the additional ships, and that would have been their cost and their basis of depreciation for the additional ships. They could have gone on taking depreciation on the prior purchased ships on their high cost basis.

In determining whether to apply for a readjustment of its prior ship purchases, the plaintiff Socony Mobil Oil Company could set its accountants to work with the several credit and debit provisions of the paragraphs of section 9. Their computations would show that, taking all the items into account, a section 9 readjustment would bring the company a check for \$4,615,243.23. There would be, then, no difficulty in reaching a decision to apply for a section 9 readjustment. The application was made and the check was received.

Our task is to determine how much the ships cost the plaintiff. The plaintiff says that it paid \$28,204,659.59 for the ships; that it got back \$4,615,243.23 in the section 9 readjustment; that its cost was, therefore, \$23,589,416.36. It concedes that that cost should be reduced by \$6,565,741.95 for a reason not here in dispute, which leaves a net cost, claimed by the plaintiff, of \$17,023,674.41.

The Government's position is that the plaintiff's cost was the statutory sales price of the ships which, the parties agree, was \$19,804,682.30. It would deduct from that amount the undisputed \$6,565,741.95 referred to above, and arrive at the figure of \$13,238,940.35. The difference of \$3,784,734.06 between the cost figures arrived at by the parties is the amount on which, the plaintiff asserts and the Government denies, depreciation is deductible for Federal tax purposes.

Section 23 of the Internal Revenue Code of 1939, 26 U. S. C. (1952 ed.) §23, permits a deduction for depreciation of property used in the taxpayer's trade or business. Section 113 of the Code, 26 U. S. C. (1952 ed.) §113, says:

The basis of property shall be the cost of such property.

It would seem that if one has bought property and paid \$10,000 for it, and the seller later offers to readjust the price, according to a complicated formula, and when the computation is completed, the seller gives back to the buyer \$3,117.24, the property has cost the buyer \$6,882.76. That being, in fact, his cost, it would seem to be his basis for computing depreciation, if the property is depreciable for tax purposes.

The Government does not deny that the plaintiff's depreciation should be based upon its cost. But it says that the plaintiff's "cost" for this tax purpose is not the difference between what it originally paid and what it got back in the section 9 readjustment. That means that the Government's asserted "cost" is not the economic, dollars-and-cents cost, but an artificial figure, legally deemed, for

this tax purpose, to be the cost though it is not in fact the cost.

Congress could, of course, have provided that a former purchaser of ships who desired to take advantage of the readjustment of price offered him by section 9 should, as a condition of the readjustment, obligate himself to compute future depreciation on a basis other than actual cost. Congress could have done this expressly, or by writing a text from which such an implication would necessarily result. Congress has not done so expressly, and we do not find that it has shown an intent to do so.

A bill was considered and rejected by the House of Representatives which would have, if enacted, supported the Government's position. See H. R. 3603, 79th Cong., 1st Sess. Instead, the House of Representatives passed a bill containing a section which was essentially like the one which was finally enacted as section 9. See H. R. 3603, 79th Cong., 1st Sess., in the Senate, October 3 (Legislative Day October 2) 1945 (as passed by the House on October 2, 1945). The Senate, however, enacted a bill containing a section which was similar to the one which had been rejected by the House of Representatives. See section 9 of H. R. 3603, 79th Cong., 1st Sess., in the Senate, December 4 (Legislative day, October 29) 1945. That bill contained a section 9(e)(1) which provided:

If an adjustment in the purchase price of a vessel is made under this Section, the income and excess profits taxes of the vessel owner under the Internal Revenue Code for the taxable year within which the delivery of the vessel was made to the purchaser and for subsequent taxable years shall be redetermined. For such purposes of redetermination the vessel shall be considered as having been acquired at the adjusted purchase price, and the income and deductions attributable to such vessel shall be determined as if this Section had been in effect on the date of such delivery. (Emphasis supplied.)

If this Senate bill had become law, the Government's position in these cases would be clearly correct. But in conference between the two houses, the House's version was adopted, with changes not here important, and that version was enacted as section 9. See House of Representatives Conference Report No. 1526, 79th Cong., 2d Sess., to accompany H. R. 3603, dated February 6, 1946. The Conference Report makes no mention of the omission of section 9(e)(1) of the Senate bill, quoted above, but does, at page 17, mention one modification which the conference had made in the House-enacted bill. The modification had to do with the year of taxability of the amount credited by the Commission to the prior purchaser as interest on his overpayment.

This legislative history shows that the committees of Congress gave minute attention to the tax consequences, current and future, of the readjustment authorized by section 9. The bill as enacted by the Senate had in it an express provision that the statutory sales price should be the basis for future depreciation. The conference omitted this provision, and the Act as passed omitted it. There is no room for an implication that Congress, having considered and omitted it, showed, by other parts of section 9, an intent to retain it.

The Treasury took the position which the Government takes here, that the statutory sales price is the correct basis for depreciation. Mimeograph 6366, 1949—1 Cum. Bull. 270. In 1950 the 81st Congress, 2d Session, passed H.R. 3419, which would have amended section 9(b) by adding the following paragraph at its end:

From and after March 8, 1946 (the date of enactment of the Act), the cost basis of a vessel in respect of which the price adjustment is made shall be the undepreciated original purchase price reduced by the net amount of such adjustment in favor of the applicant resulting from the application of all of the foregoing provisions of this subsection.

Two Congressional committees which had considered section 9(b) when it was originally enacted considered the quoted amendment and explained in their reports that the position taken by the Treasury had made clarifying legislation necessary. See House of Representatives Report No. 1342, 81st Cong., 1st Sess., p. 2 and Senate Report No. 1915, 81st Cong., 2d Sess., p. 2. An expression of opinion as to the meaning of a statute, made some four years after the enactment of the statute by the same Congressional committee which had considered that statute at the time of its enactment, is an important circumstance for consideration in interpreting the statute. *Sioux Tribe of Indians v. United States*, 316 U. S. 317, 329.¹

The President vetoed H. R. 3419. His veto message is in 96 Cong. Rec. pp. 15,791—2.² The fact that the bill was vetoed does not detract from its weight as evidence of the intent of Congress and its committees in their drafting of section 9(b) in the 1946 Act.

Section 9, in its subsection (c)(2), provides that if the Government charters a ship of which the price has been readjusted under section 9, it shall not pay more per annum than 15 percent of the statutory sales price, and that if the Government loses a ship so chartered it shall not pay more than the statutory sales price, properly depreciated, for the lost ship. We see nothing in these provisions except evi-

¹ *United States v. United Mine Workers*, 330 U. S. 258, 281-282, is not to the contrary. That case said only that the opinions of several Senators, some of whom had not been members of the Senate when the legislation in question had been considered, and none of whom had been members of the Committee which had reported the legislation and which opinions were expressed eleven years after the legislation had been passed, could not "serve to change the legislative intent of Congress expressed" when the legislation had been passed. Similarly, *Rainwater v. United States*, 356 U. S. 590, 593, indicates only that an interpretation by one Congress of a statute passed by another Congress more than a half century before has "very little, if any, significance." See also the concurring opinion of Judge Littleton in *The Equitable Life Assurance Society v. United States*, Ct. Cl. Nos. 559-58—563-58, decided March 2, 1960, 181 F. Supp. 241, 245, and *A. P. Green Export Co. v. United States*, Ct. Cl. No. 126-59, decided December 1, 1960, 284 F. 2d 383, 386-7.

dence that Congress was aware, in minute detail, of the problems that would be presented by section 9 readjustments, and provided specific solutions of those problems in the statute, and did not leave them open for judicial interpretation.

The readjusted price which the plaintiffs had to pay for their ships in order to take advantage of the readjustment offered them by section 9 was more than the statutory sales price. Neither the express terms of the statute, those terms in their context, nor the relevant legislative history indicate a legislative intent that the basis for depreciation of these ships should be an artificial, legally constructed figure different from their actual mathematically computed cost.

In the case of *Barber Oil Corporation v. Manning*, 135 F. Supp. 451 (D. N.-J. 1955), the court rejected the Government's position, which was the same as its position in the instant cases.

The plaintiffs are entitled to recover, with interest as provided by law, and judgments will be entered to that effect. The amounts of recovery will be determined pursuant to Rule 38(c).

It is so ordered.

REED, *Justice (Ret.)*, sitting by designation; DUFFEE, *Judge*; LARAMORE, *Judge*, and JONES, *Chief Judge*, concur.

Certificate of Service.

I, JOHN W. McCONNELL, JR., the attorney for the Petitioner herein and a member of the Bar of the Supreme Court of the United States; hereby certify that on the day of July, 1964, I served a copy of the foregoing Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit on the Respondent herein, by delivering a copy of the same to the Solicitor General, Department of Justice, Washington 25, D. C. and to the Honorable David I. Granger, attorney of record for Respondent in the court below, Department of Justice, Washington 25, D. C.

JOHN W. McCONNELL, JR.,
Counsel for Petitioner,
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Mobile, Alabama.

In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 245

WATERMAN STEAMSHIP CORPORATION, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES

1. This income tax case involves the determination of petitioner's cost basis for depreciation of eighteen vessels purchased by it from the United States and whose sales prices were later adjusted pursuant to the Merchant Ship Sales Act of 1946, c. 82, 60 Stat. 41 (50 U.S.C. Appendix 1952 ed., Sec. 1735, *et seq.*).¹

At various times during the years 1942 through 1946 petitioner Waterman Steamship Corporation purchased eighteen vessels from the United States Maritime Commission (now the Maritime Administration). Upon receiving sixteen of the vessels, Waterman chartered them to the United States until

¹ The pertinent portions of the Merchant Ship Sales Act are set out at pages 12-20 of petitioner's Appendix.

various dates in 1946. The government paid charter hire to Waterman. Waterman reported the receipts as income on its federal income tax returns for the years 1942 through 1946, and deducted depreciation for the eighteen vessels.

On March 8, 1946, Congress enacted the Merchant Ship Sales Act of 1946 ("the Act"). Section 4 gave citizens of the United States the right to purchase from the United States war-built vessels at the statutory sales price defined in Section 3(d). Section 9 of the Act provided the opportunity, upon application, for those who had purchased vessels from Maritime prior to the Act to have their purchase prices adjusted downward to the statutory sales price. The adjustment was to be made by treating the parties as if the applicant-purchaser had bought the vessel on the date of the Act rather than earlier.

In addition, Section 9 calls for an unwinding of all the effects of the earlier transaction between the parties. By means of credits in favor either of Maritime or the applicant, the parties are restored to the positions they would have occupied if: (1) Maritime had not paid the applicant charter hire for use of the ship before the date of adjustment of its price; (2) the applicant had not paid taxes on these amounts; (3) the applicant had been paid charter hire for the ship it traded in when it bought another from Maritime; (4) the applicant had received interest on the additional funds it invested, *etc.*

Waterman applied for and was allowed adjustments of the sales prices of the eighteen vessels to conform

to the statutory sales prices under the 1946 Act. The amounts credited to Waterman were reduced, however, by the net amounts Waterman owed Maritime as a result of the unwinding of all transactions that would not have taken place if the vessels had in fact been purchased at the later date. The issue in dispute is whether, for tax purposes, Waterman's cost bases for the eighteen vessels are, as the government contends, the statutory sales prices under the 1946 Act or are, as taxpayer argues, the original costs of these vessels less the amounts refunded to it under the Act.

The Fifth Circuit, Judge Cameron dissenting, held that the intent of Congress was that pre-Act and post-Act purchasers should have the same tax basis for their ships, namely, the statutory sales price. Thereafter, the Third Circuit, affirming the District Court for the District of Delaware (*National Bulk Carriers, Inc. v. United States*, 214 F. Supp. 585 (1963) (Pet. App. 36-50)), reached the same result. *National Bulk Carriers, Inc. v. United States*, 331 F. 2d 407 (1964) (Pet. App. 51-60). (National Bulk has filed an essentially identical petition for certiorari (No. 246).) Prior to these decisions, the Court of Claims had reached the opposite result. *Socony Mobil Oil Co. v. United States*, 287 F. 2d 910 (1961), rehearing denied, 289 F. 2d 326 (1961) (Pet. App. 61-69).

2. The precise issue involved in these cases is again and presently before the Court of Claims. *Keystone Tankship Corp. v. United States*, Docket No. 240-61, argued on January 15, 1964, is awaiting decision.²

² The next decision day of the Court of Claims is October 16, 1964.

Other pending cases known to involve this issue are *Moore-McCormack Lines, Inc. v. United States* (Ct. Cl.), Docket No. 286-62; *Moore-McCormack Lines, Inc. v. United States* (Ct. Cl.), Docket No. 154-254-64; *Moore-McCormack Lines, Inc. v. Commissioner* (T.C.), Docket No. 2887-62 (awaiting decision); and *United States Lines Co. v. Commissioner* (T.C.), Docket No. 1247-62. While we have been unable to determine the precise amounts involved with respect to all affected shipowners, the question apparently retains substantial importance. The sales prices of 179 vessels were adjusted under the Merchant Ship Sales Act. At the time of adjustment, a difference of approximately \$35,500,000 in basis for depreciation turned on the issue in this case. Since depreciation is an annually recurrent deduction over the life of a ship, the depreciation deduction on many of these ships for a number of open years will depend on the issue on which the Court of Claims and the court below have split. Thus, although this issue is not one of lasting importance in the administration of the revenue laws, it substantially affects a number of taxpayers and involves a large amount of revenue.

3. We suggest that action on this petition and that in *National Bulk* be deferred for a reasonable time pending the outcome of the *Keystone Tankship* case awaiting decision in the Court of Claims. If the Court of Claims adheres to its former position, the writ should be granted, because there is a direct conflict between the Court of Claims and the Fifth and Third Circuits and it appears that there is a substantial body of pending and forthcoming litigation in-

volving the issue. On the other hand, if the Court of Claims reverses its position, there will then be no conflict and thus no need for review by this Court. If this disposition is adopted, we will inform the Court promptly of the decision in *Keystone Tankship*.

Respectfully submitted,

ARCHIBALD COX,
Solicitor General.

JOHN B. JONES, Jr.,
Acting Assistant Attorney General.

I. HENRY KUTZ,
DAVID I. GRANGER,
Attorneys.

SEPTEMBER 1964.

SUPREME COURT, U. S.

No. 245

Office-Supreme Court, U.S.

FILED

OCT - 8 1964

JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964.

WATERMAN STEAMSHIP CORPORATION,

Petitioner,

v.

UNITED STATES OF AMERICA.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FIFTH CIRCUIT.

**REPLY OF PETITIONER TO MEMORANDUM
FOR THE UNITED STATES.**

JOHN W. McCONNELL, JR.,
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IN THE
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UNITED STATES OF AMERICA.

**ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.**

**REPLY OF PETITIONER TO MEMORANDUM
FOR THE UNITED STATES.**

Petitioner's original petition for certiorari filed herein contained three Reasons for Granting the Writ:

1. The decisions of the court below in the instant case and in the companion case of *National Bulk Carriers, Inc. v. United States of America*, 331 F. 2d 407 (C. A. 3, 1963), No. 246, this Term (herein referred to as the "*National Bulk*" case) are in conflict with the decision in three cases decided by the Court of Claims, *Socony Mobil Oil Company, Inc. et al v. United States*, 287 F. 2d 910 (1961), rehearing denied, 289 F. 2d 326 (1961).

2. The opinions below in the instant case and in the *National Bulk* case are erroneous.

3. The issue in the instant case and in the *National Bulk* case is of far-reaching importance to a major segment of the United States shipping industry.

In its Memorandum, the Government has agreed that the conflict described in Reason No. 1 is a valid reason for granting the writ if the conflict should continue for a reasonable period of time.

The Government likewise has recognized the importance of the issue cited by Petitioner as Reason No. 3 for granting the writ. On this point, it should be noted that since the filing of the petition, the following additional pending case involving this same issue has come to Petitioner's attention: *Moore-McCormack Lines, Inc. v. United States*, Court of Claims No. 254-64.

The Government understandably does not recognize the validity of Reason No. 2, which points out the error in the decisions below. In its Memorandum, however, it has paraphrased Section 9 of the Merchant Ship Sales Act of 1946, 50 U. S. C. App., Sec. 1735-1746 ("the Act") in such an argumentative and misleading manner (Resp. Memo., pp. 2-3) as to obscure or confuse the issue and to raise doubt that a serious question exists. The question as heretofore stated by Petitioner (Petit. pp. 2-3) is designed to state the Question Presented objectively, taking into consideration the fact that Petitioner's cost of vessels, for tax purposes, is governed by Section 113(a) of the Internal Revenue Code of 1939, and that the Act simply provides for "an adjustment in the price of such vessel[s]" (the Act, Sec. 1742(a)(4)) but contains no provision as to the income tax effect of that adjustment.

Thus, the proper statement of the Question Presented remains "whether or not the tax cost basis of vessels purchased by Petitioner prior to the enactment of the Act, and whose original purchase price was 'adjusted' downward pursuant to Section 9 [Section 1742] of the Act, is the economic investment in the vessels represented by their original purchase price less the amount of that price adjustment, as determined under the provisions of Section 113(a) of the Internal Revenue Code of 1939" (Petit. pp. 2-3).

In the light of the Question Presented, Petitioner continues to urge as Reason No. 2 for granting the writ, serious error on the part of the courts below in answering the Question Presented in a manner which reduces Petitioner's original investment in the vessels for tax purposes by an amount which was greater than the amount of the adjustment received under the Act. With respect to Reason No. 1 and Reason No. 3, the Government has conceded their validity. With respect to Reason No. 1, however, while recognizing the conflict, the Government suggests (Resp. Memo., pp. 4-5) that action on the Petition be deferred for a reasonable time pending the outcome of the case of *Keystone Tankship Corp. v. United States*, Ct. Cls. Docket No. 240-61, which is presently awaiting decision by the Court of Claims. That case was argued on January 15, 1964 and it seems quite likely that the decision is being delayed pending action upon the Petition in the instant case. Even if a prompt decision were forthcoming which eliminated the conflict, the volume of cases presently in the Tax Court of the United States, some of which might well be appealed to Courts of Appeal for Circuits other than the Third and Fifth, strongly suggests that the present conflict might well recur in any event in the absence of a final decision on the merits in the instant case.

In any event, it is respectfully submitted that in view of the conceded conflict of decisions and importance of the issue, coupled with the error of the courts below, this Court should not defer action but should grant the writ regardless of the pendency of the *Keystone Tankship* case, the other cases cited in the Petition (Petit. p. 9), and those cases cited herein.

Respectfully submitted,

JOHN W. McCONNELL, JR.,
Counsel for Petitioner.

October , 1964.

WILLIAM M. ARMBRECHT,
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1101 Merchants Nat'l Bank Bldg.,
Mobile, Alabama,
Of Counsel.

Certificate of Service.

I, JOHN W. McCONNELL, JR., the attorney for the Petitioner herein and a member of the Bar of the Supreme Court of the United States, hereby certify that on the day of October, 1964, I served a copy of the foregoing Reply of Petitioner to Memorandum for the United States on Respondent herein, by mailing a copy of the same to the Solicitor General, Department of Justice, Washington 25, D. C. and the Honorable David I. Granger, attorney of record for Respondent in the court below, Department of Justice, Washington 25, D. C.

JOHN W. McCONNELL, JR.,
Counsel for Petitioner,
1101 Merchants Nat'l Bank Bldg.
Mobile, Alabama

In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 245

WATERMAN STEAMSHIP CORPORATION, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

SUPPLEMENTAL MEMORANDUM FOR THE UNITED STATES

In our memorandum in response to the petition in this case, we advised the Court that another case involving the same issue was pending before the Court of Claims and had been argued on January 14, 1964. *Keystone Tankship Corp. v. United States*, Docket No. 240-61. A decision in favor of the government in that case would have resolved the existing conflict of decisions and thereby eliminated the need for review of the question by this Court. For that reason we suggested that the Court withhold action on the petition in this case to await the decision of the Court of Claims in the *Keystone Tankship* case.

The next decision day of the Court of Claims was October 16, 1964. Upon the failure of the Court of Claims to announce a decision in the *Keystone Tank-*

ship case on that date, we asked the clerk of that court to inquire as to the status of the case. The clerk has now advised us, with the permission of the court, that the Court of Claims has decided not to take action in the *Keystone Tankship* case until the final disposition of the two cases pending in this Court on petitions for certiorari, this case and *National Bulk Carriers v. United States*, No. 246.

Because of the disposition of the Court of Claims not to reconsider its earlier decision prior to consideration of the question by this Court, we can no longer represent that the existing conflict may be independently resolved. In view of the admitted conflict and the abortion of the possibility that it might be resolved without the intervention of this Court, it is submitted that the petition for certiorari in this case should now be granted.

We do not, however, urge that the petition also be granted in the companion case, *National Bulk Carriers*, No. 246. The application of the price-adjustment provisions of the Merchant Ship Sales Act of 1946 to each case involves a rather complicated set of computations, and some mastery of the figures involved and what they represent is necessary to a full understanding of the nature of the adjustments. The two cases present exactly the same legal question but, of course, wholly different figures and computations. Even with two hours being allowed for argument, we believe the Court would find it easier to understand the application of the relatively complex statutory provisions in the context of a single set of figures rather than two, and we do not believe there is any

offsetting advantage to be gained by hearing argument in both cases. Action on the petition in No. 246, accordingly, might appropriately be withheld to await the final disposition of this case.¹ Alternatively, if the Court deems it appropriate to hear argument in both cases, we suggest that the two cases be placed on the summary calendar and that they be consolidated for purposes of oral argument.

Respectfully submitted.

ARCHIBALD COX,
Solicitor General.

JOHN B. JONES, JR.,
Acting Assistant Attorney General.

I. HENRY KUTZ,
DAVID I. GRANGER,
Attorneys.

NOVEMBER 1964.

¹ We have no particular reason to prefer the selection of one case rather than the other for plenary argument. We have suggested the selection of this case (No. 245) only because it was the one first decided by the court of appeals and the one first docketed in this Court. We note also that it involves much the larger amount of money. Although it is not an important consideration, if only one record is to be printed, it does not seem inappropriate to place the burden on the petitioner with more at stake. And since the petitioners, obviously acting in cooperation, chose to docket this case first, they presumably also view it as the "main" case.

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JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964.

No. 245.

WATERMAN STEAMSHIP CORPORATION,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

**BRIEF OF NATIONAL BULK CARRIERS, INC.,
AS AMICUS CURIAE.**

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No. 245.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964.

WATERMAN STEAMSHIP CORPORATION,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

**BRIEF OF NATIONAL BULK CARRIERS, INC.,
AS AMICUS CURIAE.**

Preliminary Statement.

This *amicus curiae* brief is being submitted in behalf of National Bulk Carriers, Inc. (hereinafter referred to for convenience as "*National Bulk*") which has petitioned the Supreme Court of the United States for a writ of certiorari to the United States Court of Appeals for the Third Circuit, October Term, 1964, No. 246, to review the Court's judgment on an issue identical to that of the case of *Waterman Steamship Corporation v. United States*, October Term, 1964, No. 245. The decision in the *Waterman Steamship* case will govern the disposition of the *National Bulk* case and consequently this brief is being filed to set forth the viewpoint of *National Bulk* without repetition of the facts or detailed argument which counsel for *Waterman Steamship* (hereinafter referred to for convenience as "Petitioner") must necessarily explore.

Summary of Argument.

The main thrust of the argument herein is that the cost basis of vessels purchased by petitioner must be the amount paid by petitioner for such vessels. Section 9 of the Merchant Ship Sales Act of 1946 does not change the ordinary tax rule that the economic investment in an asset represents its cost. Section 9 merely sets forth the amount of adjustment to be made in the purchase price of vessels and its language is clear that it provides only a formula to be applied in its entirety in determining the adjustment. The legislative history, both before and after the enactment of Section 9, clearly establishes that the basis for depreciation of vessels is actual economic cost and does not confirm Government's contention that statutory sales price equals tax cost.

ARGUMENT.

I.

Petitioner's cost basis for depreciation under I.R.C. (1939) Section 113 is its actual economic investment in the vessels.

All parties agree that Petitioner's basis for depreciating the vessels in question is their cost basis under Section 113 of the Internal Revenue Code of 1939 (hereinafter referred to for convenience as the "Code"). All parties likewise agree that Petitioner's original cost was equal to its economic investment in the vessels and agree as to the amount thereof. It is, of course, elementary and beyond argument that Petitioner's present cost basis for the vessels is determined historically by reference to its original cost and by

adjusting such cost to reflect each subsequent transaction affecting its economic investment in the vessels.

All parties agree as to the effect of applying this historical determination of cost to each of Petitioner's subsequent transactions which affect its economic investment, except for the transaction in which Petitioner's original cost was adjusted through the receipt of a refund of a portion of such cost pursuant to Section 9 of the Merchant Ship Sales Act of 1946 (C. 82, 60 Stat. 41, hereinafter sometimes referred to for convenience as the "Act"), which will be discussed below.

II.

Section 9 of the Act clearly authorized payment or credit to petitioner of a single adjustment in its original economic investment.

Section 9 of the Merchant Ship Sales Act of 1946 provides:

"(a) A citizen of the United States who on the date of the enactment of this Act (March 8, 1946)—

"(1) owns a vessel which he purchased from the Commission prior to such date, and which was delivered by its builder after December 31, 1940; * * *

"shall, except as hereinafter provided, be "entitled to *an adjustment* in the price of such vessel * * *"

"(b) Such adjustment shall be made, as hereinafter provided, by treating the vessel as if it were being sold to the applicant on the date of the enactment of this Act, and not before that time. *The amount of such adjustment shall be determined as follows:*" (Emphasis supplied.)

Immediately after the words of the statute set forth above are eight subsections, each describing the method of computation for one item in a complicated formula which is to be followed in calculating the amount of the adjustment. Some of these formula items result in credits in favor of the Maritime Commission, while others result in credits in favor of the party applying for the adjustment. Finally, the credits in favor of the Commission and in favor of the applicant are offset and any balance remaining in favor of the applicant represents the amount of the adjustment payable to him. The words of the statute quite clearly provide that each of these formula items is merely a factor to be determined in calculating the total amount of the adjustment.

III.

The amount of the Section 9 adjustment received by Petitioner clearly reflects the economic effect of the adjustment.

The basic purpose of the Act was twofold. First, it authorized the sale of certain surplus vessels at an amount equal to their statutory sales price—a defined term. Secondly, a considerable number of similar vessels, including those involved herein, had been sold prior to the Act, many at prices higher than the Statutory Sales Price on similar vessels and under sales contracts which required a subsequent reduction in the selling price in the event of later legislation authorizing a sale of similar vessels at reduced prices. (Page 6 of Senate Report No. 807, 79th Congress, 1st Session.)

The amount of the Section 9 adjustment received by Petitioner clearly reflects the economic effect of the com-

pleted adjustment transaction by means of which Petitioner received back a part of its original economic investment in these vessels. Thus Petitioner's economic investment for tax basis purposes was concededly \$47,149,043.42 immediately prior to the adjustment. The amount of the adjustment under Section 9 was concededly \$20,468,904.07. Petitioner, having therefore economically benefited by a return of some 20 million dollars of its original investment now should have a remaining tax cost basis for the vessels equal to the balance of \$26,680,139.35.*

In discussing the effect of the receipt of such a Section 9 adjustment, Judge Madden, in *Socony Mobil Oil Company, Inc. v. United States*, 287 F. (2d) 910, 912 (Ct. Cls. 1961), stated:

"Section 23 of the Internal Revenue Code of 1939, 26 U. S. C. (1952 ed.) Sec. 23, permits a deduction for depreciation of property used in the taxpayer's trade or business. Section 113 of the Code, 26 U. S. C. (1952 ed.) Sec. 113, says:

'The basis of property shall be the cost of such property.'

* Economic investment and agreed tax cost basis immediately prior to the Section 9 adjustment

Cash	\$16,235,446.21
Adjusted basis of four vessels traded in	175,876.40
Balance of outstanding mortgage indebtedness	30,737,720.81
Total	\$47,149,043.42
Section 9 adjustment—reduction of outstanding mortgage indebtedness 3/8/46	(20,468,904.07)
Tax Cost basis as of 3/8/46	<u>\$26,680,139.35</u>

With regard to the basis immediately prior to the Section 9 adjustment, it is agreed that due to a cash payment in reduction of the mortgage on 3/8/46, cash investment on that date was increased and mortgage indebtedness was reduced by \$86,037.70. This transaction, however, did not change the total investment.

It would seem that if one has bought property and paid \$10,000 for it, and the seller later offers to readjust the price, *according to a complicated formula*, and when the computation is completed, the seller gives back to the buyer \$3,117.24, the property has cost the buyer \$6,882.76. That being, in fact, his cost, it would seem to be his basis for computing depreciation, if the property is depreciable for tax purposes." (Emphasis supplied.)

It is well established in the tax law that monies received for the sale of property do not change their character merely because of the fact that the purchase price is predicated upon other facts, such as gross income from the property, net income from the property, etc. See *Comm. v. Hopkinson*, 126 F. 2d 406 (C. A. -2 1942); *P. J. Massey v. U. S.*, 226 F. 2d 724 (C. A. -7 1955); *Edward C. Myers*, 6 T. C. 258 (1946) acq., 1958-2 C. B. 6. The Petitioner is simply asking that its cost basis be arrived at by adding up all the payments made by it with respect to the purchase price of the vessels, and subtracting the adjustment in such purchase price received by it under Section 9 of the Act, irrespective of the fact that a complicated formula was employed by the parties to determine the amount of such adjustment.

IV.

The plain meaning of the clear statutory language should be recognized in construing Section 9

In considering the proper construction of Section 9, since the statutory language is completely clear, this Court's rules of statutory interpretation require that the meaning of the plain words be recognized.

In *Comm. v. Korell*, 339 U. S. 619, 70 S. Ct. 905 (1950) this Court was faced with the issue of whether a taxpayer

who purchased convertible bonds at a premium was entitled to an amortization deduction based upon the difference between the purchase price and the call price, regardless of whether the premium had been paid for the conversion privilege. The Supreme Court allowed the full amortization although it recognized that Congress could have provided for a narrower definition of premium so as to disallow such deduction. Of immediate interest, however, is this Court's recognition of the clear statutory language:

"But we cannot reject the clear and precise avenue of expression actually adopted by the Congress because in a particular case we may know, if the bonds are disposed of prior to our decision, that the public revenues would be maximized by adopting another statutory path . . . it cannot be argued that Congress lacked the legislative discretion to have reached such a conclusion."

Subsequently, this Court applied this principle even though an amended statute to alter the *Korell* result still produced for the taxpayer an apparent tax-saving windfall, rather than, as in the case at Bar, allowed for the application of orthodox tax principles.

After Congress passed legislation to disallow amortization of a premium allocable to a conversion privilege the Government challenged a taxpayer who purchased corporate bonds at a premium and amortized the difference between the premium price and the special 30-day call price at which the issuer could redeem the bonds from specially designated funds. The Government argued that the higher general 30-day call price should be used rather than the special call price. The Supreme Court, in holding for the taxpayer in *Hanover Bank v. Comm.*, 369 U. S. 672; 82 S. Ct. 1080 (1962) stated as follows:

"A firmly established principle of statutory interpretation is that 'the words of statutes—including revenue acts—should be interpreted where possible in their ordinary everyday senses.' *Crane v. Commissioner*, 331 U. S. 1, 6. The statute in issue here, in plain and ordinary language, evidences a clear congressional intent to allow amortization with reference to any call date named in the indenture. Under such circumstances we are not at liberty, notwithstanding the apparent tax-saving windfall bestowed upon taxpayers, to add to or alter the words employed to effect a purpose which does not appear on the face of the statute . . ."

Since the statutory language is clear, the applicable statutory rule of construction, established by the foregoing decisions, is that the words should be given their plain meaning.

V.

Lower court's construction of Section 9 is erroneous since it is based on only a part of the statutory language and is contrary to the language *in toto*.

The Court of Appeals for the Fifth Circuit, in analyzing this issue, quoted the opening paragraph of Section 9(b) and then briefly summarized the formula factors provided for in the subsections thereof. The court summarily holds that the language of the Act and the legislative history revealed an intent on the part of Congress that the purchases of vessels occurring prior to enactment of the Act be treated as if the purchase had occurred on the date of the enactment at the statutory sales price for purposes of determining Petitioner's tax cost basis. The lower court's decision in effect is that the statutory language of Section 9 requires that by operation of law there is to be a

new subsequent sale of the vessel to Petitioner, despite the fact that the vessel was already purchased previously at a considerably higher price than the amount of the new purchase price. Such a construction does not adequately account for three all-important facts:

(1) The vessel was in fact purchased prior to the enactment of the Act;

(2) the actual purchase price paid on the original purchase was more than the statutory sales price, as defined; and

(3) the actual adjustment in purchase price allowed to Petitioner was not large enough to reduce that original purchase price to the statutory sales price.

To implement this construction, the Government has selected from all of the various factors in Section 9 going to make up the adjustment formula, those facts which will produce an amount which by coincidence equals the same amount as the statutory sales price in respect of Petitioner's vessels. Thus, the Government contends and the lower court has agreed that Petitioner's tax cost basis for the vessels should be determined as follows:

Economic investment and agreed tax cost basis immediately prior to Section 9 adjustment (same as Part III above)	\$47,149,043.42
--	-----------------

Section 9 adjustment—composed for this purpose of those portions of the adjustment formula under Section 9 which produce an amount equal to statutory sales price of vessels as calculated under Section 3(d) of the Act	29,151,061.58
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Tax Cost basis as of 3/8/46.....	<u>\$17,997,981.84</u>
----------------------------------	------------------------

Although the lower court's opinion quotes the full text of the opening paragraph of Section 9(b) in reaching its decision, it apparently read that language as though it did not contain the very vital phrases set out in brackets in the following quotation of this paragraph:

"Such adjustment shall be made [, *as hereinafter provided,*] by treating the vessel as if it were being sold to the applicant on the date of the enactment of the Act, and not before that time. The amount of such adjustment shall be determined as follows: . . ."

The vital bracketed words which the Government's argument slights provide in context that, while to some extent for purposes of calculating the Section 9 adjustment the vessel will be treated as sold at a later date than the actual sale, that extent will be spelled out "*as hereinafter provided.*" The various subsections of Section 9 then describe the various items going into the adjustment formula.

Certainly in this language there is no basis whatever for holding that there must be a complete treatment of the vessels *for all purposes*, including income taxation, as having been purchased on the date of the enactment of the Act at an arbitrary price, even for purposes which are beyond the specific language of Section 9. Yet from this incomplete quotation, the lower court apparently reasons that regardless of the actual amount of the adjustment reducing Petitioner's economic investment in the vessels, the only part of the adjustment that can be recognized for tax purposes is an amount equal to the amount which the statute establishes as the statutory sales price for the vessels. This conclusion erroneously relies upon the above language quoted out of context, and the words "statutory sales

price," which are in themselves somewhat confusing unless analyzed in context.*

The lower court, therefore, erroneously selected one phrase of Section 9 out of context in order to substantiate its conclusion that only a portion of the adjustment actually received must be considered as the adjustment under Section 9 for tax cost basis purposes. This conclusion is clearly contrary to the statutory language.

VI.

Absent specific statutory language, lower court's result is too unreasonable to attribute to congressional intent.

A comparison of the economic consequences of Petitioner's and Government's calculations of tax cost basis quickly reveals that under Government's and the lower

* The term itself tends to be confusing upon a cursory reference. However, closer examination of the entire statute reveals that the term is defined in Section 3(d) as simply "an amount" equal to a specified percentage of prewar domestic cost of the type of vessel, adjusted as therein specified. This definition has then been adapted as a legislative drafting technique to two different usages. First, and most important from the standpoint of the overall Act, Section 4(a) authorizes any citizen to apply to purchase a vessel then on hand at the statutory sales price. In this context, the Statutory Sales Price is the price at which a vessel then on hand would be sold subsequent to the enactment of the Act.

The second usage, on the other hand, and that applicable in situations such as the case at Bar, in which adjustments in original purchase price were to be received when vessels were purchased prior to the enactment of the Act, is quite different. In such instances, the Statutory Sales Price appears in Sections 9(b) and (c) simply as a convenient method of stating the adjusted prewar domestic cost of the vessel. See Sections 9(b)(1)(3) and (4), and (c)(2) and (3). In this latter context, the Statutory Sales Price is employed as a convenient method of stating an amount to be utilized in determining the amount of various items in the complicated adjustment formula and *no sale* of the vessel is involved.

court's construction of the effect of Section 9, Petitioner would have an agreed tax cost basis on March 7, 1946 of \$47,149,043.42. On the next day, it would have a tax cost basis of \$17,997,981.84. Although for tax cost basis purposes its economic investment in the vessels would be deemed to have been reduced \$29,151,061.58, it will have actually received back as a Section 9 adjustment, however, only \$20,468,904.07 of its tax cost basis. Thus, by operation of Section 9 as so construed, some \$8,682,157.51 of Petitioner's economic investment in the vessels, which in fact has not been returned to it in the Section 9 adjustment transaction, suddenly is lost and becomes unrecognizable for tax purposes, without such loss being reflected in any way in its tax return.

Of course, if Congress had so desired, Section 9 could have been drafted to create a transaction which for income tax purposes results in a loss of economic investment in assets, without providing a deduction for such loss for purposes of calculating taxable income or expense. On the other hand, since the tax law is concerned with the economic realities of transactions, and Petitioner did in fact make the original economic investment which would now be reduced by operation of law, such a statute would be an unorthodox tax statute, to say the least. Under such circumstances, it is respectfully submitted that such an unusual result, which overrides and therefore in effect amends the normally applicable provisions of the Internal Revenue Code, should be provided for, if at all, in clear and specific statutory language. Such language is not present in Section 9.

Discussing this point, Judge Madden in the *Socony Mobil* opinion (p. 913) stated:

"The Government does not deny that the plaintiff's depreciation should be based upon its cost. But it says that the plaintiff's 'cost' for this tax purpose is not the difference between what it originally paid and what it got back in the Section 9 readjustment. That means that the Government's asserted 'cost' is not the economic, dollars-and-cents cost, but an artificial figure, legally deemed, for this tax purpose to be the cost though it is not in fact the cost.

Congress could, of course, have provided that a former purchaser of ships who desired to take advantage of the readjustment of price offered him by Section 9 should, as a condition of the readjustment, obligate himself to compute future depreciation on a basis other than actual cost. Congress could have done this expressly, or by writing a text from which such an implication would necessarily result. Congress has not done so expressly, and we do not find that it has shown an intent to do so."

Since Petitioner in fact has previously paid more than the statutory sales price for its vessels, if Congress had in fact desired to treat Petitioner for all purposes as having paid only the statutory sales price at a later date, the natural, logical, fair and equitable thing to do would be to refund the full difference between the higher price originally paid and the statutory sales price, or authorize a tax loss for any discrepancy. The statute does neither, and yet the Government and the lower court seek to construe it as requiring by operation of law that this sale be deemed to have taken place at a hypothetical price which bears no relation to Petitioner's investment in the vessels.

Section 9, under the lower court's construction, is so unorthodox and so drastic in its application that a prior purchaser, applying for relief under its provisions, could

be in a more disadvantageous economic position after tax than if he had applied for no Section 9 relief at all.

For example, in S. Rept. No. 1915, 81st Cong., 2d Sess., p. 3, reporting on H. R. 3419, which is discussed in Part VII below, the situation is presented of an American operator who buys a tanker for \$2,800,000 and operates it under a charter with the Government until enactment of the Act. As of that date, the Act established a statutory sales price of \$1,600,000 for similar tankers. An adjustment under Section 9 produces a refund to the operator of \$400,000 under the adjustment formula.

After receiving payment of this refund, the operator could find that under the Government's construction his cost basis for the vessel somehow had been reduced from \$2,800,000 to the statutory sales price of \$1,600,000. This means that his depreciation expense deductions on the vessel would be reduced by the amount of \$1,200,000 (\$2,800,000 minus \$1,600,000) and his ordinary taxable income increased by a like amount. Since that income was subject to Federal income tax at the rate of 38 per centum in 1946, the operator will find himself paying an additional tax bill totaling \$456,000, if one makes the unwarranted assumption that the tax rates will not increase to over 38 per centum during the life of the vessel. The operator will have accepted a \$400,000 price adjustment from the Government only to find that the same Government has taken away \$456,000 in the form of taxes imposed over the remaining life of the vessel, and in reality the Government takes more as the tax rates increased in subsequent years.

The language of Section 9 does not even suggest the result as construed by the lower court. Government's argument, therefore, produces the unreasonable and anomalous situation of Congress intending to enact a relief provision

but simultaneously intending by the apparently clear language thereof to in effect so amend normal income tax principles that recipients might be even worse off after taxes than if they had forgone the relief. In any choice of constructions, the one producing such an unreasonable result should be avoided unless required by the specific language of the statute, which is absent here.

VII.

In the alternative, if language of Section 9 may be considered ambiguous, its legislative history does not support respondent's asserted construction.

A. Rejection by Congress of Senate Draft of Section 9 which would have specifically required result for which Government is presently arguing.

In the process of developing the legislation which ultimately became Section 9 of the Act, there was presented to Congress for its consideration two quite distinct methods of solving the problem of a price adjustment for prior purchasers, both methods taking into consideration various aspects of the previous transaction in an effort to make the price adjustment as equitable as possible for both parties. The first of these methods was incorporated in Section 9 of H. R. 3603, submitted to the House of Representatives. (See H. R. 3603, 79th Congress, 1st Session, in the House of Representatives, June 27 and June 28, 1945, referred to Committee and Committed to the Committee of the Whole House.)

This version of the Bill was rejected by the House in favor of a revision essentially similar to the Bill finally

enacted, referred to herein as the House Bill. See H. R. 3603, 79th Congress, 1st Session, in the Senate, October 3 (Legislative Day October 2), 1945 (as passed by the House on October 2, 1945). However, the Senate enacted a refined version of original H. R. 3603, 79th Congress, 1st Session, in the Senate, December 4 (Legislative Day October 29), 1945, referred to herein as the Senate Amendment.

The Senate Amendment was rejected in the legislative process in favor of the Bill which became law but it did, however, provide that the so-called statutory sales price should become the applicant's tax basis upon receipt of the tax adjustment. Discussing this point in the *Socony Mobil Oil Co.* case *supra* (p. 913), Judge Madden stated:

"If this Senate bill had become law, the Government's position in these cases would be clearly correct. But in conference between the two houses, the House's version was adopted, with changes not here important, and that version was enacted as Section 9. See House of Representatives Conference Report No. 1526, 79th Cong., 2d Sess., to accompany H. R. 3603, dated February 6, 1946. The Conference Report makes no mention of the omission of Section 9(e)(1) of the Senate bill, quoted above, but does, at page 17, mention one modification which the conference had made in the House-enacted bill. The modification had to do with the year of taxability of the amount credited by the Commission to the prior purchaser as interest on his overpayment.

"This legislative history shows that the committees of Congress gave minute attention to the tax consequences, current and future, of the readjustment authorized by Section 9. The bill as enacted by the Senate had in it an express provision that the statutory sales price should be the basis for future depreciation. The conference omitted this provision, and the Act as passed omitted it. There is no room

for an implication that Congress, having considered and omitted it, showed, by other parts of Section 9, an intent to retain it."

B. Enactment by Congress of H. R. 3419.

Another equally clear and even more explicit expression of Congressional intent occurred in 1950, following the raising of this question by the Governmental tax authorities. The 81st Congress, 2nd Session, that year was composed of a large part of the members of the Congress which had enacted the Act in 1946 and the key committee chairmanships of which were not changed substantially. Both Houses, upon becoming aware of the question being raised, enacted H. R. 3419 which would have amended Section 9 in a manner which would have conclusively resolved any question of Congressional intent in this matter. The bill specifically stated that the Act was to be construed as contended for herein by Petitioner. Although the President utilized the pocket veto to prevent the bill from becoming law, it nevertheless stands as a beacon, so clearly illuminating the Congressional intent on this issue as to leave no shadow of a doubt.

This explicit expression of Congressional intent, made only four years after the enactment of the Act, is conclusive authority as to the significance of the Act on this issue. See *Sioux Tribe v. United States*, 316 U. S. 317 (1941), in which this Court was called upon to determine whether a certain statute passed in 1887 vested compensable title to the Indians holding land by Executive Order. In 1892, five years after passage of the 1887 statute, the Senate Committee on Indian Affairs had stated emphatically in a Senate Report that the 1887 statute did not confer such title. The Supreme Court, in deciding against the claim of the Indians, stated as follows:

"This statement by the Committee which reported the General Allotment of 1887, made within five years of its passage, is virtually conclusive as to the significance of that Act."

The present case would appear to present no difficult question of statutory construction.

If, however, for any reason, any ambiguity exists in the statutory language, Congress has removed any doubts by stating how Section 9 of the Merchant Ship Sales Act should be construed. The Congress has said that the taxpayer is entitled to use the actual cost of the vessel (and not the "statutory sales price") in computing depreciation for purposes of Federal income tax. The Third Circuit cited *Fogarty v. United States*, 340 U. S. 8 (1950) as in effect precluding the application of the principle of the *Sioux Tribe* case. But *Fogarty* merely stated that if the meaning of a statute is determinable, then subsequent events would not change the meaning.

In *Federal Housing Administration v. The Darlington, Inc.*, 358 U. S. 89, 90 (1958), 79 S. Ct. 141, the Supreme Court stated as follows:

"... Subsequent legislation which declares the intent of an earlier law is not, of course, conclusive in determining what the previous Congress meant. But the latter law is entitled to weight when it comes to the problem of construction. See *United States v. Stafoff*, 260 U. S. 477, 480, 43 S. Ct. 197, 6 L. Ed. 358; *Sioux Tribe v. United States*, 316 U. S. 317, 329-330, 62 S. Ct. 1095, 1100-1101, 86 L. Ed. 1501."

See also *The Glidden Company v. Olga Zdanok*, 370 U. S. 530, 541 (1962); 82 S. Ct. 1459.

At a minimum, therefore, H. R. 3419 is entitled to substantial weight, and when combined with the remaining leg-

islative history of the Act, leaves no doubt that the intention of Congress was not as stated by Respondent.

C. Committee Reports and Congressional Record.

In referring to Committee Reports for clarification of the Congressional intent, statements in the Senate Committee Report are helpful only in a negative way, since they elaborate upon a result which would have been produced by the Senate draft of Section 9, which was rejected by the Congress. On the other hand, it is significant that the very clear description of the results under that rejected Senate draft, and the results in the case at Bar for which the Government argues, coincide rather precisely. The rejection of the Senate draft quite clearly indicates an intention to reject the results thereof described in the accompanying Committee Report.

With regard to the remainder of the legislative history, it is respectfully submitted that in spite of some rather loose descriptive language on the floor of the House about the effect of the rather complicated formula for adjustments contained in Section 9, all of such history can reasonably be interpreted as explaining the operation of the formula. But only, however, (to borrow the language of the statute itself) "*as therein provided.*" It is submitted that the only reasonable interpretation of these floor discussions is an attempt to explain how the statutory formula had been established, and not as an indication of an intent to extend the clearly limited language of the statute itself regarding the effect under the Section 9(b) formula of prior purchase of vessels.

In *National Bulk Carriers, Inc. v. U. S.*, 331 F. 2d 407, the United States Court of Appeals for the Third Circuit stated that

"an examination of the statutory scheme of Sec. 9 together with a study of its legislative history convinces us that the position of the Government is sound."

Except to set forth the argument of both the applicant and the Government, the Court nowhere in its opinion made any attempt to analyze or interpret the language of the statute for itself, but relied on extracts of the legislative history out of the context of the statutory language to arrive at its decision. The Court of Appeals for the Third Circuit has, therefore, taken a clearly worded statute, treated it as ambiguous, then used such history to create a statutory scheme contrary to the specific words used in the statute.

The Petitioner requests that the Supreme Court apply its rules of statutory construction to give effect to the clear meaning of the plain words of the statute.

Conclusion.

For the reasons set forth above, it is respectfully submitted that the decision of the Court of Appeals for the Fifth Circuit be reversed, and that National Bulk's petition for certiorari be granted and the decision of the Court of Appeals for the Third Circuit be reversed.

Respectfully submitted,

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February 18, 1965.

Certificate of Service.

I, JACQUIN D. BIERMAN, a member of the Bar of the Supreme Court of the United States, hereby certify that on the 18th day of February, 1965, I served a copy of the foregoing *amicus curiae* brief by depositing same at a United States post office, with first class postage prepaid, addressed to each of the following attorneys of and for the United States in Department of Justice, Washington 25, D. C.:

1. The Honorable Archibald Cox, Solicitor General.
2. The Honorable John S. Jones, Acting Assistant Attorney General.
3. The Honorable I. Henry Kutz and David I. Granger, Attorneys, Department of Justice.

JACQUIN D. BIERMAN.

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JOHN E. DAVIS, CLERK

IN THE
Supreme Court of the United States

OCTOBER TERM, 1964.

No. 245

WATERMAN STEAMSHIP CORPORATION,
Petitioner,

vs.

UNITED STATES OF AMERICA.

**ON WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE
FIFTH CIRCUIT.**

BRIEF FOR PETITIONER.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964.

No. 245

WATERMAN STEAMSHIP CORPORATION,

Petitioner,

vs.

UNITED STATES OF AMERICA.

**ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FIFTH CIRCUIT.**

BRIEF FOR THE PETITIONER.

Opinions Below.

The opinion of the Court of Appeals (R. 183) is reported at 330 F. 2d 128. The dissenting opinion of Circuit Judge Cameron (R. 187) begins at 330 F. 2d 133. The opinion of the United States District Court for the Southern District of Alabama (R. 170) is reported at 203 F. Supp. 915, with that portion of the Opinion which was reversed by the Court of Appeals and which concerns the issue before this Court beginning at 203 F. Supp. 928. (R. 170)

Jurisdiction.

The judgment of the Court of Appeals was made and entered on March 30, 1964. (R. 192) Petition for Rehearing

was filed on April 20, 1964 (R. 193) but was denied by that Court on May 4, 1964. (R. 199) The Petition for a writ of Certiorari was filed with this Court on July 2, 1964, and was granted on December 7, 1964. (R. 200) The jurisdiction of this Court rests on 28 U. S. C. 1254(1).

Question Presented.

Whether the tax cost basis of vessels purchased by Petitioner prior to the enactment of the Merchant Ship Sales Act of 1946 and whose original purchase price to Petitioner was "adjusted" downward pursuant to Section 9 of that Act, is the economic investment of Petitioner in the vessels, represented by their original purchase price to Petitioner, less the amount of that price adjustment, as determined under the provisions of Section 113(a) of the Internal Revenue Code of 1939.

Statutes Involved.

The statutory provisions involved are Sections 23(1) and (n), 113(a) and (b) and 114(a) of the Internal Revenue Code of 1939, 26 U. S. C. (herein referred to as the "Code") and Sections 3 and 9 of the Merchant Ship Sales Act of 1946, c. 82, 60 Stat. 41 (herein referred to as the "Act"); 50 U. S. C., Appendix, Section 1735 *et seq.*, which statutory provisions are printed in Appendix A, *infra*. The pertinent sections of the Regulations issued by the United States Maritime Commission (now Federal Maritime Board but herein referred to as "Maritime"), pursuant to Section 9 of the Act, are Sections 299.66 and 299.133,¹ which are printed in Appendix A, *infra*, A-11.

¹ 46 C. F. R., Part 299, Subpart E and Subpart G as published in General Order 60, Revised, 22 F. R. 11103, December 31, 1957; originally published in 11 F. R. 4459, April 23, 1946 as Sections 299.51 and 299.87.

Statement.

Petitioner is a common carrier for hire by water engaged in foreign commerce and has been so engaged since its incorporation in 1919. During the period January 1, 1941 through March 7, 1946, Petitioner purchased from Maritime 18 vessels. (R. 41; R. 163)²

Each of these vessels was purchased by Petitioner from Maritime under a Contract. (R. 52) Contract No. MCc-40639 between Maritime and Petitioner for the purchase of the vessel *Fairport* (Exhibit 24 to Petitioner's Exhibit G; R. 76, 78) is one such Contract and is fairly representative of the Contracts by and between Petitioner and Maritime for the purchase of the other 17 vessels (see Contract for *HASTINGS*, Exhibit 28 to Petitioner's Exhibit G; R. 76, 117). ARTICLE 3 of such Contract sets out the purchase price of the particular vessel (R. 80) and ARTICLE 4 provided for the time and method of payment of the purchase price for such vessel. (R. 80-82) ARTICLE 12 of such Contract was entitled "Future Legislation" and provided as follows (R. 86):

"ARTICLE 12. Future Legislation. The Commission agrees that in the event of the enactment of legislation authorizing the sale by the United States of vessels, constructed or sold under conditions

² Actually, on March 7, 1946 Petitioner was a party to a contract with Maritime to purchase a vessel—the *John B. Waterman*—which was then under construction but which was not delivered until March 11, 1946. R. 163. Although the *John B. Waterman* was not delivered to Petitioner until March 11, 1946, it will be treated hereunder as if all actions on that date had occurred on March 7, 1946.

similar to the construction and sale of the Vessel herein agreed to be sold, at a price less than the actual construction cost thereof, exclusive of the cost of national defense features installed in any such vessel, the Buyer shall be granted the benefit of such legislation with respect to the sales price of the Vessel, in which event the Commission shall make an appropriate *adjustment* with the Buyer on the purchase price of the Vessel" (Emphasis added).

The same or similar provisions were contained in the other such Contracts. (R. 118, 124 and 169)

For all eighteen vessels so purchased by Petitioner from Maritime, Petitioner agreed to pay as the aggregate purchase price the sum of \$49,582,767.02. (R. 41)³

At the times of the original purchases of the eighteen vessels, Petitioner paid \$6,449,107.02 in cash and was allowed a credit of \$2,609,600 for four vessels traded in and delivered to Maritime on the original purchase price. Petitioner gave a mortgage to the United States of America as security for the balance due on the purchase price of each vessel, which mortgages aggregated, for the eighteen vessels, \$40,524,060.00. (R. 41)⁴ The mortgages given by the Petitioner to the United States on the *Fairport* (Exhibit 25 to Petitioner's Exhibit G; R. 76, 87) and on the *Hastings* (Exhibit 29 to Petitioner's Exhibit G; R. 76, 125) are representative of the mortgages given by Petitioner to the Government on each of the eighteen vessels purchased during this period.

³ The purchase price of each of the eighteen vessels is indicated on line No. 1 of Exhibit B to Exhibit S-3 of Petitioner's Exhibit F (R. 51, 63, 65 and 67) and Defendant's Exhibit 1. (R. 161-3) See computation I, Appendix E, *infra*, E-1.

⁴ The cash payment on each of the eighteen vessels, the trade-in allowance allowed on four of the vessels, and the amount of the original mortgage indebtedness on each vessel is set out in Defendant's Exhibit 1. (R. 161-163)

Upon delivery of sixteen of the eighteen vessels so purchased by Petitioner, the latter immediately chartered each of the vessels to the Government. (R. 41) The Bareboat Charter of the *Hastings* between Petitioner and the War Shipping Administration, Contract No. WSA-8884 (Exhibit 59 to Petitioner's Exhibit G; R. 76, 152), is fairly representative of the charters under which the other 15 vessels were chartered by Petitioner to the War Shipping Administration.

From the date of purchase of each of the eighteen vessels through March 7, 1946, Petitioner made additional cash payments to the Government in reduction of the mortgage indebtedness on the said vessels, in the aggregate amount of \$9,786,339.19, leaving a balance due on the mortgage indebtedness as of that date, of \$30,737,720.81. (R. 41) As of March 7, 1946, the adjusted basis of the eighteen vessels claimed by Petitioner, approved by the Internal Revenue Service and stipulated herein was \$47,149,043.42 (after adjustment of unrecognized gain on the four vessels traded in and prior to certain other adjustments not in controversy in this matter). (R. 41)⁵

On March 8, 1946, Congress enacted the Act. Section 9 of the Act (Section 1742, Tit. 50, App., 1952 ed.) provides in general that a citizen of the United States, such as Petitioner, who owns a vessel, such as the eighteen then owned by Petitioner, shall "be entitled to an adjustment in the price of such vessel under this section" if he makes application within such time and in such form and manner as

⁵ No gain was recognized for tax purposes on the trade-in of the 4 vessels by reason of Section 510(e) of the Merchant Marine Act, 1936, 46 U. S. C. Section 1060(e) (1952 ed.). The total adjusted basis of the 4 vessels traded in was \$175,876.40 at the time they were traded in, which became a part of the adjusted basis of the vessels for which traded (Petitioner's Exhibit F, Par. 1, R. 40, 41). See computation II in Appendix E, *infra*, E-1.

prescribed by Maritime. Petitioner made such application on May 31, 1946 for adjustment in price of the eighteen vessels in question. Pursuant to that Application and the Regulations of Maritime, Petitioner and Maritime entered into an "Interim Agreement" on December 30, 1946 for an interim adjustment in the purchase price of the eighteen vessels, Contract No. MCc-42281 (Exhibit S-1 to Petitioner's Exhibit F; R. 40 and 42).⁶ This Agreement found that "The Applicant is lawfully entitled to an adjustment in the price of the vessels, pursuant to the provisions of Section 9 of the Act".⁷

By letter of January 3, 1951, Maritime forwarded certain schedules to Petitioner for its review and concurrence.⁸ On June 11, 1951, Petitioner and Maritime entered into a "Final Agreement," in the form of Addendum No. 1 to Contract No. MCc-42281, entitled "Final Agreement for Adjustment for Prior Sales Pursuant to Section 9 of the Merchant Ship Sales Act of 1946." (Exhibit S-3 to Petitioner's Exhibit F; R. 40, 43 and 51-73)

Pursuant to the Act and to that Contract, the purchase price of the eighteen vessels was to be, and was, adjusted under the provisions of Section 9 of the Act, as of March 8, 1946. Pursuant to that Contract, Petitioner made a cash payment to the Respondent of \$86,037.70 (R. 57), and the aggregate mortgage indebtedness of Petitioner to Respondent on the eighteen vessels was adjusted to \$10,182,779.04.

⁶ Exhibit S-1 to Petitioner's Exhibit F, is not a part of the Record printed in this Court. However, by stipulation of the parties here, it was certified to this Court by the Clerk of the Trial Court and is printed in Appendix D, *infra*, D-1.

⁷ Appendix D, *infra*, D-1 and D-2.

⁸ Exhibit S-2 to Petitioner's Exhibit F (R. 40 and 43) is not a part of the Record printed in this Court. However, by stipulation of the parties here, it was certified to this Court by the Clerk of the Trial Court and is printed in Appendix D, *infra*, D-18.

(R. 57) Thus, as of March 8, 1946, Petitioner had paid to the Government \$16,315,483.91 in cash, had been credited on the purchase price of the vessels with \$175,876.40, as the adjusted basis of the four vessels traded in, and owed the Government in the aggregate for the mortgages on the eighteen vessels, \$10,182,779.04. (R. 49) The aggregate of these cash payments, trade-in allowances and mortgage indebtedness, as of March 8, 1946, was stipulated to be \$26,680,139.35. (R. 49) It is this amount which Petitioner contends becomes the adjusted basis of the eighteen vessels for tax purposes under Section 113(a) of the Code, reflecting the transaction under which Petitioner's purchase price was adjusted as of March 8, 1946.

The aggregate "statutory sales price" of the eighteen vessels established by Maritime under the provisions of Section 9 of the Act, as defined in Section 3(d) of the Act (Section 1736, Tit. 50 U. S. C., App., 1952 ed.) was

⁹ The term will be often referred to and can be confusing if its meaning and usage be not initially understood. The term is defined in Section 3(d) of the Act, when applied to a dry cargo vessel, as "an amount equal to 50 per centum of the postwar domestic cost of that type vessel." However, this is subject to certain adjustments but in no case will such adjustment result in a statutory sales price "less than 35 per centum of the domestic war cost of vessels of the same type." Thus the term is used to mean an amount both before and after certain adjustments.

The definition is also used as a legislative drafting technique for two different usages. First, and most important from the principal purpose of the Act, Section 4(a) authorizes any citizen to apply to purchase a vessel at the statutory sales price. In this context, the "statutory sales price" is the price at which a vessel would be *actually* sold *subsequent* to the enactment of the Act.

The second usage, and the one applicable in a situation such as Petitioner's, in which an adjustment in original purchase price was to be made on a vessel *actually* purchased *prior* to the enactment of the Act, is quite different. In this latter context, the "statutory sales price" is employed as a convenient method of stating an amount to be utilized for measuring and determining various items in the complicated adjustment formula set out in Section 9. Most importantly, *no sale is actually made* under the Act under this circumstance.

\$17,997,981.84. (Par. 8(a), Petitioner's Exhibit F, R. 40, 44)¹⁰ The Government contends that this statutory sales price (regardless (1) of the actual amount of the payments made by Petitioner to Respondent under the original Contracts for the purchase of the eighteen vessels as amended by the Final Agreement by which the adjustment in price on the eighteen vessels was mutually agreed upon pursuant to Section 9 of the Act and (2) of the obligations of Petitioner to make subsequent payments on the adjusted mortgage indebtedness on all eighteen vessels under the Final Agreement) was the "cost" of these vessels to Petitioner and, therefore, the basis of these vessels for tax purposes to Petitioner. (R. 49)

The question involves the annual amount of depreciation on the 18 vessels to which Petitioner is entitled under the Code. The tax years in question are 1947 through 1950. Petitioner paid its taxes for the years in question based on a lower depreciation resulting from the lower statutory sales price basis and sued for refunds, claiming that it was entitled to the greater depreciation based on its actual cost basis in the vessels after the adjustment in purchase price.¹¹

¹⁰ See also line 13, Exhibit B to Exhibit S-3 to Petitioner's Exhibit F. (R. 40, 64, 66 and 68)

¹¹ The cost basis claimed by Petitioner for four of the vessels (*Afoundria*, *Jean LaFitte*, *Wacosta* and *Warrior*) is less than the statutory sales prices, but the cost basis claimed for the remaining fourteen vessels is greater than the statutory sales prices, resulting in a claimed total cost basis of the eighteen vessels of \$26,680,139.35, which is greater than the total statutory sales prices. The District Court held that Petitioner was entitled to a refund of Federal income taxes for the years in question by reason of a recomputation of the depreciation deductions allowable with respect to the vessels based on the higher sum as their cost basis for tax purposes. Petitioner sold one of the vessels (*Warrior*) on September 28, 1948; therefore, increased depreciation deductions are sought for all eighteen of the vessels from January 1, 1947 through September 28, 1948, and for the remaining seventeen vessels from September 29, 1948, through December 31, 1950. (Par. 13, Petitioner's Exhibit F, R. 40 and 49-50)

Summary of Argument.

The Court of Appeals erred in determining that the tax basis of the 18 vessels owned by Petitioner, whose original purchase price was adjusted under Section 9(b) of the Act, was the arbitrarily determined and artificial statutory sales price for such vessels under the Act, rather than the actual economic cost of these vessels to Petitioner determined under the normal Code rules, i.e., the original undisputed cost of the vessels less the undisputed adjustment thereagainst under Section 9(b) of the Act.

The basis of the 18 vessels for tax purposes immediately prior to the date of enactment of the Act is not in dispute and was stipulated by the parties. Although the Government contends, in effect, that the Act is a tax statute, it does not point to any specific provision of the Act which clearly establishes the tax basis of a vessel whose original purchase price is adjusted thereunder. Petitioner claims that not only was the Act not a tax statute but, by failing to provide for the tax basis of such vessel, Congress left the determination of such basis to the rules usually followed under the Internal Revenue Code of 1939.

It is well settled that, in determining the basis of property under Section 113(a) of the Code, the actual economic cost of the property to the taxpayer (i.e., the value of the property given up by the taxpayer for the property purchased plus the amount which the taxpayer obligates himself to pay) constitutes his cost basis of the property. It is undisputed, in fact it is stipulated, as to the amount of cash payments made by the taxpayer on the purchase price of the vessels up to the date of enactment of the Act, the value of the property, adjusted for tax purposes, which the taxpayer gave up for the property

purchased, and the amount which the taxpayer was obligated to pay on the purchase price immediately prior to the enactment of the Act. It is also undisputed and stipulated as to the adjustment made on the original purchase price of the 18 vessels under Section 9(b) of the Act. The controversy arises solely from the tax effect of this adjustment. Petitioner contends that such adjustment (whether carried out as a cash payment or credit, or as an adjustment to the obligation to pay, or as a combination of the two) shall simply be subtracted from the previous payments made and from the balance remaining on the original obligations to pay (the original cost basis) to get the new economic cost of these vessels and, therefore, their new tax basis to Petitioner.

Section 9(b) in eight numbered paragraphs thereunder sets out a complete and indivisible formula for determining the adjustment in purchase price. The statute is clear that the adjustment is to be made by applying each of the eight paragraphs. There is nothing in the language, in the structure or in the legislative history of Section 9(b) that would specifically, or by inference, allow or require the adjustment under that subsection to be otherwise determined.

The lower courts who have ruled for the Government on this question¹² erroneously interpreted the clear and

¹² This same question has been before three District Courts and the Court of Claims. *Barber Oil Corporation v. Manning*, 135 F. Supp. 451 (D. N. J. 1955) (herein for convenience referred to as "*Barber Oil*"); *Socony Mobil Oil Co. v. U. S.*, consolidated with *Texaco, Inc. v. U. S.* and *Mississippi Shipping Co. v. U. S.*, 287 F. 2d 910 (Ct. Cls., 1961), rehearing denied, 289 F. 2d 326 (1961) (herein for convenience referred to as "*Socony*"); *Waterman Steamship Corporation v. U. S.*, 203 F. Supp. 915 (S. D. Ala. 1962); and *National Bulk Carriers, Inc. v. U. S.*, 214 F. Supp. 585 (D. Del., 1963) (herein for convenience referred to as "*National Bulk*"). In the *Barber Oil*, *Socony* and the instant case, judg-

unambiguous language and structure of Section 9 of the Act and by inference and implication, arrived at by reasoning back from an erroneous conclusion, made one formula and one adjustment into several formulae and adjustments with differing purposes and effects.

Since Section 9(b) of the Act is clear and unambiguous as to its application and effect, resort by the lower courts to the legislative history or environment of the Act was not only not necessary but under the circumstances erroneous. However, if resort to such extrinsic aids was proper, it was only for the limited purpose of showing conclusively that the clear wording and structure of the Section was *not* as it appeared. If this legislative history confirmed, or merely raised doubts as to, the meaning and effect of the Section drawn from a literal reading thereof, then the conclusion drawn from such literal interpretation of the Section itself would stand.

If reference to legislative history was proper, Petitioner maintains that the legislative history of this particular Act,

ment in the trial court was for plaintiff taxpayer, while in the *National Bulk* case judgment was for the Government. No appeals were taken in the *Barber Oil* and *Socony* cases. The Government appealed in the instant case and the taxpayer appealed in *National Bulk* on this issue. Both Courts of Appeals ruled in favor of the Government on these appeals. *U. S. v. Waterman Steamship Corporation*, 330 F. 2d 128 (5th Cir., 1964), reversing with one judge dissenting; *National Bulk Carriers Inc. v. U. S.*, 331 F. 2d 407 (3rd Cir., 1964), affirming. Herein for convenience the Delaware District Court (Judge Wright) will be referred to as the "Delaware Court" and the Alabama District Court (Judge Thomas), as the "Alabama Court." Petitions for Writs of Certiorari were applied for in the instant case and in *National Bulk*. Petition was granted in this case and is pending in *National Bulk* (No. 246). As pointed out in Petitioner's Petition for Writ of Certiorari filed in this Court (at p. 9), four other known cases are pending with the identical issue, two in the Court of Claims and two in the Tax Court of the United States, and a substantial number of other taxpayers are faced with this same question but have not yet instituted litigation.

including prior and similar bills considered, the Committee reports thereon, and the changes in and amendments to the various bills considered and culminating in the Act, clearly supports Petitioner's position as to the application and effect of Section 9(b) of the Act. Congress considered and rejected other bills which, if adopted, would have had the effect which the Government seeks for this Act, including one that contained a specific provision that would have established the basis of a vessel, whose original purchase price was adjusted under the Act, at the statutory sales price, the result sought by the Government under the Act but without such a provision. Under these circumstances, the Delaware Court and the Courts of Appeals were in error in finding a specific Congressional intent that the statutory sales price would be the tax cost or basis for such vessels.

The Fifth Circuit erred in basing its opinion on, and choosing to follow, the reasoning of the Delaware Court, rather than the carefully reasoned analysis of the Act and of its legislative history as contained in the opinions of the Alabama Court that initially determined this case and the issue in this case in favor of Petitioner and of the Court of Claims in the *Socony* consolidated cases. The lower courts (1) misconstrued completely the effect of the amendment proposed on the floor of the House of Representatives to Section 9(b) and the explanation thereof on the floor of the House in the debates thereon, which amendment was in the main embodied in the Act as enacted; (2) relied on committee reports that concerned a Section 9(b) that was materially different from that contained in the Act as enacted; and (3) ignored the fact and the effect, of the rejection or omission of provisions in bills considered by Congress which would have specifically provided for the tax effect found by the lower courts, and contended for by the Govern-

ment, thereby erroneously making Section 9 of the Act into a law which had been considered but rejected by Congress.

Further, as a result of their studies of the legislative history of the Act, these lower courts chose to ignore entirely the unity of the formula provided in Section 9(b) and instead treated the paragraphs under that subsection as requiring two separate computations, and, therefore, a radically different tax effect, instead of the one computation clearly contemplated and provided. This error undoubtedly stemmed from a basic misunderstanding of the intent and, therefore, of the effect, of the Act as to pre-Act and postwar purchasers of vessels under the Act. Not only did the Act not equalize such purchasers in every respect, which was impossible of attainment, but there is nothing to indicate that, so far as the tax basis of vessels purchased by the two different classes of purchasers was concerned, there was an intent that the tax basis be the same or that such basis be determined other than under the normal rules applied in the same manner to both classes of purchasers.

If, however, despite the clear wording of the statute and the prior or contemporaneous legislative history, there still remains any doubt as to the application and effect of, and Congressional intent with regard to, Section 9(b), then the subsequent legislative history of Section 9(b) of the Act decisively supports Petitioner's position. As soon as the Internal Revenue Bureau took the position, which the Government argues here, that the tax basis of a vessel, whose original purchase price was adjusted under the Act, was the statutory sales price, legislation was introduced in the Congress to make clear that the adjusted purchase price, and not the statutory sales price, was the proper cost basis of such vessel. The Committee reports in support of this legislation clearly indicated that it was not the *original* intent of the Congress that the statutory sales price be such

cost basis. These reports were made by the Committees of both Houses which had similar jurisdiction to those which had previously considered, over a long period, the legislation which culminated in the Act. The fact that this legislation, when adopted, was vetoed by the President does not impair or make irrelevant such legislation and such legislative history as evidence of the intent of Congress on the issue at hand.

Argument.

1. Internal Revenue Code principles require tax cost basis to reflect true economic cost of property to taxpayer as its basis for computation of allowable depreciation.

(a) Tax cost basis of vessels to Petitioner prior to enactment of Act is not in dispute and was stipulated.

On March 7, 1946, Petitioner was the owner of 17 vessels and the party to a contract with the Government to purchase an 18th vessel, each of which had been purchased from the Government by a separate contract. Each of these vessels had been paid for, partly in cash (and, as to four of the vessels, partly by a trade-in allowance) and the balance of the purchase price remaining due on each was evidenced by a series of 20 notes in equal amounts, payable in the succeeding 20 years after the date of purchase, and secured by a preferred ship mortgage. Sixteen of the eighteen vessels had been chartered to the Government upon purchase. Through March 7, 1946, Petitioner had been paid charter hire by the Government on the 16 vessels chartered to it in the aggregate amount of \$13,430,430.94.¹³

¹³ Line 7, Sheet 5, Exhibit B to Exhibit S-3 to Petitioner's Exhibit F (R. 40, 63 and 67)

The 18 vessels in question undoubtedly belonged to Petitioner, subject only to Petitioner's paying the notes when due and fulfilling its other obligations required and secured by the mortgages on each of the vessels. The original contract of purchase on each vessel provided that, in the event of enactment of legislation authorizing the sale by the Government of vessels constructed or sold under conditions similar to the construction and sale of the vessels purchased by Petitioner from the Government at a price less than the actual construction cost of such vessel, Petitioner would be granted the benefit of such legislation with respect to the sales price of the vessels to it, and, in that event, the Government "shall make an *appropriate adjustment* with the Buyer on the purchase price of the Vessel". (R. 86 and 124) Also, the charter hire paid by the Government and received by the Petitioner on the 16 vessels had been paid and received in accordance with the charters then in effect and were held as a matter of right by Petitioner and such charter payments had been commingled with, and become a part of, the capital assets of Petitioner.

The parties hereto stipulated and the Alabama Court found as a matter of fact, which finding was recognized by the Fifth Circuit, that the tax basis of the 18 vessels to Petitioner on March 7, 1946, was \$47,149,043.42. (Par. 3, Petitioner's Exhibit F, R. 40 and 41) This basis was the actual economic cost to Petitioner of these vessels, represented by their original aggregate purchase price of \$49,582,767.02 (adjusted downward by \$2,433,723.60 to account for unrecognized gain on four vessels traded in at the time of original purchase), and had been approved by the Internal Revenue Service. Of the original purchase price, \$6,449,107.02 was paid in cash; \$2,609,600.00 was paid through a trade-in allowance on four vessels; and the

remaining sum of \$40,524,060.00 was evidenced by a series of notes secured by 18 preferred ship mortgages, one per vessel. From the various dates of purchase of the vessels through March 7, 1946, Petitioner made cash payments in the aggregate of \$9,786,339.19 in reduction of the mortgage indebtedness, leaving an aggregate mortgage indebtedness, as of March 8, 1946, of \$30,737,720.81; for which Petitioner was obligated to pay.

As of March 8 1946, an adjustment in the purchase price of the vessels, by means of an adjustment in the remaining mortgage indebtedness pursuant to Section 9 of the Act, was made. The net economic effect on Petitioner of such adjustment in purchase price was simply and solely a reduction of \$20,468,904.07 in the then remaining mortgage indebtedness¹⁴ and in the amount that Petitioner had previously obligated itself to pay for the vessels. Petitioner's economic investment in, and consequently its cost basis of, the vessels was therefore reduced as of March 8, 1946, from \$47,149,043.42 to \$26,680,139.35.¹⁵

(b) Positions and contentions of the parties

Petitioner contends that the Act, although having certain specific but limited provisions with regard to taxes, is not a tax statute; that the Act itself nowhere specifically fixes, nor can it be construed by a normal and reasonable

¹⁴ Par. 9, Petitioner's Exhibit F, R. 40 and 47-48; line 20, Sheet 6, Exhibit B to Exhibit S-3 to Petitioner's Exhibit F, R. 68. As of that date and pursuant to the provisions of the Final Agreement between Petitioner and Government, Petitioner made an additional cash payment to the Government of \$86,037.70. This simply increased the amount of cash payments which Petitioner had made and reduced its mortgage indebtedness by an equivalent amount but had no effect on the economic investment of Petitioner in, and its tax cost of, the vessels. Par. 9, Petitioner's Exhibit F (R. 40 and 48)

¹⁵ See computation VIII, Appendix E, *infra*, E-2.

construction of its provisions to fix the tax cost basis of a vessel whose original purchase price is adjusted pursuant to Section 9 of the Act; and, that, therefore, the tax cost basis of such a vessel is fixed and determined by the usual provisions and rules of the Internal Revenue Code.

Petitioner further contends that the usual provisions and rules of the Code require that the tax cost basis of property is its owner's economic cost of, or investment in, that property; and that, when the purchase price of property is later adjusted (either by a cash refund, a reduction in indebtedness for a portion of the purchase price, or a combination of the two), the owner's economic investment in that property is its original cost to him less the amount of the adjustment.

Therefore, Petitioner respectfully contends that under the normal applicable Code provisions its economic investment in the 18 vessels, and therefore its tax cost basis, is the original tax cost (\$47,149,043.42) less the adjustment in its mortgage indebtedness (\$20,468,904.07), or \$26,680,139.35.¹⁶

The Government contends that the Act is a tax statute and by its very provisions, construed in the light of its legislative history, establishes the tax cost basis of a vessel whose original purchase price is adjusted pursuant to the Act and that the normal and usual Code provisions do not apply. According to the Government, Section 9 of the Act requires that the tax cost basis of such a vessel be its "statutory sales price" as defined and used in the Act, which is \$17,997,981.84 for the 18 vessels owned by Petitioner.¹⁷ This tax cost basis is \$8,682,157.51 less than Petitioner's actual economic investment in these 18 vessels.

¹⁶ See computations IV, VI and VII, Appendix E, *infra*, E-1 and E-2.

¹⁷ See computation IX, Appendix E, *infra*, E-2.

- (c) **The controlling Code sections and principles support Petitioner's contention that its true economic cost of the 18 vessels is their tax cost basis.**

This issue arose by reason of the deduction which Petitioner claims it is entitled to take under the Code for depreciation on the 18 vessels purchased by it from the Government and whose purchase price was adjusted under Section 9 of the Act. Section 23 of the Code enumerates the deductions allowed from gross income to compute net income, and subsection (l) of that section provides for a reasonable allowance for the exhaustion, wear and tear (including a reasonable allowance for obsolescence) of property used in the trade or business. Subsection (n) of the same section provides that "The basis upon which depletion, exhaustion, wear and tear, and obsolescence are to be allowed in respect of any property shall be as provided in section 114." The latter section in turn provides in subsection (a) that "The basis upon which exhaustion, wear and tear, and obsolescence are to be allowed in respect of any property shall be the adjusted basis provided in section 113(b) for the purpose of determining the gain upon the sale or other disposition of such property . . ." Section 113 of the Code provides in part as follows:

"SECTION 113. Adjusted basis for determining gain or loss.

"(a) Basis (unadjusted) of property.—The basis of property shall be the cost of such property; except that—

"(b) Adjusted basis.—The adjusted basis for determining the gain or loss from the sale or other disposition of property, whenever acquired, shall be the basis determined under subsection (a), adjusted as hereinafter provided."

Thus in general, for purposes of calculating depreciation, the basis of the property to be depreciated is the cost to its owner.¹⁸ Cost is not defined in the statute nor in the regulations. However, the courts have held that the outlay of the owner for, or the latter's net investment in, the property is its cost basis to the owner. *Detroit Edison Co. v. Commissioner*, 319 U. S. 98, 63 Sup. Ct. 902, 87 L. Ed. 1286 (1943). This will be determined by the cash paid or the value of property given by the taxpayer plus the amount which the taxpayer obligates himself to pay for the property. *Crane v. Commissioner*, 331 U. S. 1, 67 Sup. Ct. 1047, 91 L. Ed. 1301 (1947). This conforms to the usual understanding and meaning of cost. As stated by Circuit Judge Cameron, dissenting in the Fifth Circuit (at p. 135), Webster's definition of cost is "The amount in value paid, charged or engaged to be paid for anything bought or taken in barter." In determining the cost basis of the property under this Section of the Code, subtleties should be ignored and actual economic cost of the property to the taxpayer should be determined by looking to the substance of the transaction, *Abraham I. Effron v. Commissioner*, 25 B. T. A. 853 (1932), and fictitious or artificially created costs, either by the taxpayer to avoid taxes or by the Government to increase taxes, are not controlling.¹⁹

Under subsection (a) of Section 113, there are 23 paragraphs enumerating exceptions to the basic rule. However, none of these exceptions remotely touches upon the problem at hand. Unless the transaction clearly falls within one of the specific exemptions requiring or permitting a basis other than original cost, the latter is to be the basis. Although

¹⁸ Treasury Reg. 111, Section 29.113(a)-2. Mertens, *Law of Federal Income Taxation*, Vol. 3A, Section 21.02, p. 13.

¹⁹ 3A Mertens, *op. cit. supra*, note 18, at 15.

there are these numerous exceptions, they are not to be extended by implication.²⁰

There is no dispute as to the applicable Code sections. Also, it is not disputed that Petitioner's basis for the 18 vessels prior to the adjustment in price was \$47,149,043.42 and that Petitioner's mortgage indebtedness was reduced pursuant to Section 9 of the Act by \$20,468,904.07. Under the recognized tax principles the subtraction of this reduction in mortgage indebtedness from the original basis will give Petitioner's net investment in or outlay for the property, and its new tax basis. As Judge Madden cogently and succinctly stated in *Socony* (at pp. 912-3):

"It would seem that if one has bought property and paid \$10,000 for it, and the seller later offers to readjust the price, according to a complicated formula, and when the computation is completed, the seller gives back to the buyer \$3,117.24, the property has cost the buyer \$6,882.76. That being, in fact, his cost, it would seem to be his basis for computing depreciation, if the property is depreciable for tax purposes."

Against this the Government attempts arbitrarily to fix the unadjusted tax basis of the 18 vessels at the "statutory sales price" of \$17,997,981.84. This would result in a tax basis slightly in excess of the actual cash paid on the purchase price of the vessels as of March 8, 1946 (in the amount of \$16,235,446.21), and would almost completely ignore the additional \$10,182,779.04 which Petitioner was still obligated to pay. As the Court of Claims stated in *Socony* (at p. 913): "The Government does not deny that the plaintiff's depreciation should be based upon its cost. But it says that the plaintiff's 'cost' for this tax purpose

²⁰ 330 F. 2d 128, 134 (1964); 3A Mertens, *op. cit. supra* note 18, at 13 and Section 27.10, p. 27.

is not the difference between what it originally paid and what it got back in the section 9 readjustment. That means that the Government's asserted 'cost' is not the economic, dollars-and-cents cost, but an artificial figure, legally deemed, for this tax purpose, to be the cost though it is not in fact the cost."

If the Government is to prevail, there must be some clear and compelling reason for arbitrarily fixing Petitioner's cost basis of the vessels at an amount less than its economic investment in the vessels. In the absence of such a reason, and it is respectfully submitted that no such reason exists, the normal Code provisions and tax principles will be followed, giving the tax basis contended by Petitioner.

2: Section 9 of the Act sets forth a complete and indivisible formula which must be applied in its entirety in determining the amount of adjustment to be made in the purchase price and, therefore, in the tax cost basis, of vessels purchased from Maritime prior to the effective date of the Act.

Sections 3 and 9 of the Act are the only ones that pertain to Petitioner and this issue. Section 3 contains, in the main, definitions that apply to Section 9. The provisions of Section 9 of the Act, entitled "Adjustment for Prior Sales to Citizens," are clear and unambiguous and relate solely to price adjustment on prior sales. Subsection (a) provides that a citizen who owns a vessel which he purchased from the Commission between certain dates, or is a party to a contract with the Commission to purchase a vessel which has not been delivered to him, "shall . . . be entitled to an *adjustment in the price of such vessel under this section* if he makes application therefor, . . ." (Emphasis added).

Section 9(b) provides that "such adjustment shall be made as hereinafter provided,..." The term "such adjustment" has meaning only in reference to the "adjustment in the price of such vessel," as set out in the preceding subsection (a). Subsection (b) further provides that "the amount of such adjustment shall be determined as follows." Again, the term "such adjustment" can only mean the "adjustment in the price of such vessel." Thereafter, in subsection (b), follow eight numbered subparagraphs, all of which, according to the plain wording of the Act, are to be applied in determining the amount of such adjustment.²¹

Paragraphs (1) through (8) of Section 9(b) are part of a complicated formula, which consists of a number of adjustments and credits to the applicant and to Maritime, the net result of which, however, is *the* adjustment in original purchase price. In connection with Section 9 of the Act, it must be recalled that its sole purpose and function was to serve only in the case of a vessel *sold prior to the enactment of the Act*. The entire section is based on a fiction, that of "treating the vessel as if it were being sold to the applicant on the date of the enactment of this Act, and not before that time." (Section 9(b)). This recognizes that no *actual* sale took place at that time, but only that the adjustment provided by that section would be made under such fiction and as of that date.

Paragraph (1) is a credit to applicant for the excess of all cash payments made upon the original purchase price over 25% of the statutory sales price.²² Paragraph (2)

²¹ See Appendix A, *infra*, A-6.

²² Although the Act provides that if such payments are less than such 25%, "the Applicant *will pay* the difference to the Commission", Maritime has, in such cases, treated it as a credit to Commission. This was the situation in *National Bulk*; see 214 F. Supp. 585, 587. See computations III and XIV, Appendix E, *infra*, E-1 and E-5.

provides for an adjustment in Applicant's mortgage, the amount and manner of which is set out in Paragraph (3).²³ Paragraph (4) is a credit to Applicant of the excess of cash payments plus re-adjusted trade-in allowance (determined under Paragraph (7)) over statutory sales price, to the extent not allowed under Paragraph (1). Paragraph (5) credits applicant with interest at 3½% per annum from date of original delivery of vessel to Applicant on excess of original purchase price over any trade-in allowance, less a counter-adjustment. Paragraph (6) credits Commission with charter hire paid applicant for bareboat use of the vessel up to date of the Act and credits Applicant for charter hire that would have been paid for bareboat use of vessel exchanged on original purchase (from date of exchange to date of Act). Paragraph (7) limits the allowance for a vessel exchanged on original purchase to the amount provided in Section 8 of the Act. Paragraph (8) provides that there shall be subtracted from the sum of the credits in the favor of the Commission and Applicant, respectively, the overpayment of or deficiencies in Federal taxes resulting from the computations required under Section 9(c)(1). Then Paragraph (8) further provides that the resulting sums of credits of Commission and Applicant shall be netted for disposition.²⁴

It can thus be seen that Paragraphs (1), (4), (5), (6) and (8) grant certain credits, and that Paragraphs (2), (3) and (7) make certain adjustments. The credits are required by Paragraph (8) to be netted together, the net result of which is commonly referred to as the "net cash credit" or "cash adjustment." (Par. 8(g), Petitioner's Exhibit F,

²³ See computation IV. Appendix E. *infra*, E-1.

²⁴ See computation V. Appendix E. *infra*, E-1.

R. 40 and 46-7) All agree that the credit against the mortgage indebtedness pursuant to Section 9(b)(3) constitutes part of the total amount of the adjustment in purchase price provided for in that Section. The controversy arises solely with respect to the effect to be given to those credits provided for in Section 9(b), which were netted together pursuant to Section 9(b)(8) in order to arrive at the "net cash credit." Petitioner contends that the "net cash credit" or "cash adjustment" determined pursuant to Section 9(b)(8) constitutes an integral part of the adjustment in purchase price computed by means of applying that part of the formula in Section 9(b) relating to credits measured by cash transactions and that the total amount of the adjustment in purchase price under Section 9 is determined by adding the amount of the reduction in mortgage indebtedness, under Section 9(b)(3), and the "net cash credit", under Section 9(b)(8).

However, the Government contends that the "net cash credit", as such, does not constitute a part of the adjustment in purchase under Section 9. To support this theory it divides Section 9(b) into two computations with differing purposes. Paragraphs (1) through (4) constitute one computation for the purpose of determining the adjustment in purchase price with the result that the adjusted purchase price, and therefore, the cost basis, is the statutory sales price. Paragraphs (5) through (8) constitute the second computation whose purpose is to "unwind" certain transactions between Applicant and Government occurring between the dates of original purchase and of the Act, the amounts of which are netted together pursuant to Paragraph (8) solely for convenience in determining and making payments.

There is nothing in the language nor in the structure of Section 9(b) to support such a theory.²⁵ In fact both language and structure absolutely refute such an interpretation. As previously indicated, Section 9(b) provides that "the amount of such adjustment shall be determined as follows", followed by the eight numbered paragraphs without more or without a break after Paragraph (4). Also Paragraph (8) in netting the credits provides that "there shall be subtracted from the sum of the credits in favor of the applicant *under the foregoing provisions of this subsection . . .*"; meaning Paragraphs (1) through (8) (not just (5) through (8)) and including specifically the credits in Paragraphs (1) and (4).

The position which the Government now takes was not the position of Maritime, the agency charged with the responsibility for implementing the Act. On April 23, 1946, Maritime issued regulations pursuant to the Act.²⁶ Section 299.51²⁷ of these Regulations was entitled "Adjustment for Prior Sales to Citizens." The Regulations, in so far as Section 9 is concerned, in general, follow closely the form and wording of the statute itself. Subsection (d) of Section 299.51, entitled "Amount of Adjustment", recognized the fiction under which the adjustment under Section 9(b) would be made, and the purpose being served by the computations required by that fiction and made in the numbered

²⁵ A fact which was recognized by the Delaware Court (at p. 590): "... While the legislature has not interlined any distinguishing language between those sections that bring the contract price down to the statutory sales price and the other sections, a close reading suggests that the legislature *may* have had some distinction in mind . . ." (Emphasis added).

²⁶ 11 Fed. Reg. 4459, Ch. II, Subchapter E, 46 C. F. R., Part 299. These were revised by Gen. Order 60, 22 F.R. 11103, Dec. 31, 1957, codified in the same portion of the Code of Federal Regulations.

²⁷ New Section 299.66, 46 C. F. R. Appendix A, *infra*, A-13.

paragraphs under Section 9(b). In each of the numbered paragraphs under 299.51(d) it was carefully pointed out that the credit was being made "for the purposes of subparagraph (8) of this paragraph (d)".²⁸ Subparagraph (f) of Section 299.51, entitled "Method of Adjustment," makes more specific the adjustment to which Section 9(b) of the Act refers and reads as follows:

"If the Administration finds that the applicant is entitled to an adjustment, applicant will be notified of the *adjusted purchase price* determined by the Administration. Unless the applicant notifies the Administration to the contrary within 15 days following the date of receipt by the applicant of the Administration's determination of *adjusted purchase price*, *this adjusted purchase price* will be binding upon applicant and it agrees to execute an *addendum to its original contract to purchase*, which addendum will be sent to him by the Administration." (Emphasis added.)

The form of application for such adjustment was set out in Section 299.87²⁹ of those Regulations and was entitled "Application for Adjustment of Purchase Price." The method of adjustment, as set out in subparagraph (f) of the Regulation, was also set out as Section F of the Application.

On May 31, 1946, Petitioner filed an application under Section 9 of the Act for an adjustment in price under the Act of the 18 vessels owned and purchased by it from the Government. On December 30, 1946, Petitioner and the Government (acting through Maritime) entered into an "Interim Agreement" for adjustment of price sales of

²⁸ This wording is contained in each of the paragraphs providing for computations of credits. See Appendix A, *infra*, A-15 through A-17.

²⁹ Now Section 299.133, 46 C. F. R. See Appendix A, *infra*, A-19.

vessels to citizens, pursuant to Section 9 of the Act, Contract No. MCo-42281.³⁰ At the conclusion of ARTICLE XII of the Interim Agreement, it was agreed that the net credit to the Applicant on account of such interim adjustment "shall be credited by the Commission on the adjusted mortgage indebtedness of the Applicant and applied on the unpaid installments thereof with respect to such vessels as may be designated by the Applicant." ARTICLE XVIII of Interim Agreement provided as follows: "Applicant and the Commission further agree that when final adjustment and settlement of this Agreement is made as herein provided for, such adjustment and settlement shall constitute and become full, final and complete discharge of the respective liabilities of the parties one to the other, (1) under the terms of the contracts by virtue of which Applicant required from the Commission title to the war-built vessels herein named and (2) pursuant to the provisions of the Act."

On January 3, 1951, the Chief of the Division of Claims of Maritime wrote to Petitioner and submitted revised schedules, reflecting "the final adjustment with respect to each of the eighteen vessels involved, before taking into account any overpayment or deficiency in federal taxes resulting from application of Section 9(c)(1) of the Act, to be furnished by the Bureau of Internal Revenue." On Sheet 6 of Schedule II, enclosed with that letter, item 18 is as follows: "18. Total net credit to owner before tax adjustment . . . \$20,038,698.41",³¹ which is the sum of the adjustment in mortgage indebtedness under Paragraph (3) and the net cash credit to Petitioner under Paragraph (8).

³⁰ Exhibit S-1 to Petitioner's Exhibit F, Par. 5, R. 42; Appendix D, *infra*, D-1. See note 6, *supra*.

³¹ Par. 6, Petitioner's Exhibit F, R. 43; Exhibit S-2 to Petitioner's Exhibit F, Appendix D, *infra*, D-18. See note 8, *supra*.

On June 11, 1951, the "Final Agreement for Adjustment for Prior Sales Pursuant to Section 9 of the Merchant Ships Sales Act of 1946", Addendum No. 1 to Contract No. MCE-42281, between Petitioner and the Government (acting through Maritime), was made and entered into.³² ARTICLE 1 identified each of the war-built vessels and the construction contract and purchase contract applicable to it (R. 52); ARTICLE 2 pertained to credits in favor of Applicant (R. 53); ARTICLE 3 pertained to credits in favor of the Government (R. 55); ARTICLE 4 pertained to net cash credits and stated that "The net amount of the final cash adjustment in favor of the Applicant under Section 9 of the Act is \$2,977,112.19, . . ." (R. 56); ARTICLE 5 pertained to the mortgage adjustment and disposition of Applicant's net cash credits (R. 56-7); and ARTICLE 7 contained a provision similar to ARTICLE XVIII of the Interim Agreement, pertaining to the finality of the settlement (R. 59).

Thus in its Regulations and in its various agreements with Petitioner Maritime treated the formula in Section 9(b) as unitary by netting the various credits and did not divide the computations into an adjustment in purchase price and into certain cash credits for purposes of payment only. Under these circumstances, although Petitioner maintains the statutory language is clear and unambiguous, the holding in *Federal Housing Administration v. The Darlington*, 358 U. S. 84, 90, 79 Sup. Ct. 141, 3 L. Ed. 2d 132 (1958) is appropriate:

" . . . The contemporaneous construction of the Act by the agency entrusted with its administration is squarely to the contrary. In circumstances no more ambiguous than the present we have allowed

³² R. 51, Exhibit S-3 to Petitioner's Exhibit F.

contemporaneous administrative construction to carry the day against doubts that might exist from a reading of the bare words of a statute. * * *

It is also pertinent that the issue as to the basis of the vessels has been raised by the Internal Revenue Service, an agency which had nothing to do with the basic administration of the Act, a fact which it has recognized.³³

However, the Government attempts to bolster its argument by contending that the charter hire which Petitioner received on the vessels and for which a credit was given to the Commission under Paragraph (6) of the formula contained in Section 9(b) is a non-capital item and therefore cannot be counted in determining basis. It is basic tax law that monies received for the sale of property do not change their character merely because of the fact that the purchase price is predicated upon other facts, such as gross income or net income from the property. See *Commissioner v. Hopkinson*, 126 F. 2d 406 (2nd Cir., 1942); *Massey v. U. S.* 226 F. 2d 724 (7th Cir., 1955); *Edward C. Myers*, 6 T. C. 258 (1946).³⁴ Also it must be recalled that Section 9(b) is a

³³ "The determination of the applicability of the Act to a specific vessel, the amount of the adjustment, and the responsibility for entering into an agreement with the applicant as to the application of Section 9(c)(1) of the Act are matters within the jurisdiction of the Commission. The act confers no authority to function in these matters upon the Bureau of Internal Revenue." Mimeograph 6366, 1949-1 Cum. Bull. 270. (Emphasis added.)

³⁴ Suppose as an example a sale of income producing property such as a vessel either for a contingent price or with a "most-favored-customer" clause (that is, that if a similar vessel is subsequently sold by the seller for a lesser price, the earlier purchaser will get the benefit of the reduced price), the formula for final determination in each to be similar. The original purchase price is to be adjusted based upon interim events such as earnings (or losses), expenses incurred in production of income (normal as well as taxes on the property or on the earnings), and similar factors. Would anyone contend that the adjusted purchase price, in either event, would not be the original price less the adjustment, although such factors as earnings, net or gross, expenses, losses and taxes were a measure of the adjustment?

fiction or hypothesis used solely for the purpose of making certain determinations leading to a price adjustment. Included in the complicated formula are factors which are *measured* by certain hypothetical events, none of which actually or legally took place. The fact that the purchase price of property is determined by reference to or measured by other factors does not change the amount or the status of the purchase price.

Thus a careful reading of the Act, the regulations of Maritime and the Contract between the Government and Petitioner implementing it leads to no doubt of its meaning, its application and its effect. There is nothing in the Act to support the Government's theories (1) that the formula contained in Section 9(b) is really two formulas with differing computations, purposes and results and (2) that the one net total adjustment in purchase price under that Section was not the sum of the initial adjustment in mortgage indebtedness under Paragraph (3) and the net cash credit to Applicant under Paragraph (8). Also there is nothing in the Act that would change, or exempt the transaction from, the usual Code provisions for determining the basis of property for depreciation purposes.

3. The Delaware District Court and the Court of Appeals for the Fifth Circuit erroneously interpreted the clear language of Section 9.

As indicated before, the Act is not a tax statute. Its principal purpose is the disposal of merchant ships. However, as in the case of many statutes whose principal purpose is other than tax, it has tax effects. The point at issue

is whether these tax effects are provided for specially in the Act or are left to the usual Code provisions or rules. There is no dispute between the parties as to the meaning and effect of Section 9 of the Act as to its principal purpose, the adjustment in purchase price of Petitioner's 18 vessels. This was agreed upon and consummated by written contract and the facts stipulated by the parties.

What does the Act provide, if any, as to the tax effects of Section 9? It contains only two sections with any reference whatsoever to taxes. These are subsections (c)(1) and (b)(8) of Section 9 of the Act; but neither says anything whatsoever with regard to the basis for tax purposes of a vessel whose price is adjusted under that section. Thus, there is no statutory rule or provision set out in the Act which would change the normal application and effect of Section 113 of the Code.

How did the lower courts then determine otherwise? The Delaware Court commences by asserting that "Section 9 is sufficiently unclear to justify resort to legislative history". (At p. 590). Then it cites four factors in the statute itself to support the Government's argument.³⁵ First it quotes that portion of Section 9(b) which states that "Such adjustment shall be made . . . by treating the vessel as if it were being sold to the applicant on the date of the enactment of this Act, . . . and not before that time." We have already recognized that Section 9 operates under a statutory fiction. However, it is quite apparent that this fiction

³⁵ That Court, however, by concluding that "The presence of logical arguments supporting two interpretations of the same language compel the conclusion that the statute is ambiguous" (at p. 591), at least concedes that the statutory language also logically supports Petitioner's position.

is to apply *only* to obtain the adjustment in price and not for *all* purposes.

Then the Delaware Court quite erroneously and with no justification from the form or wording of the statute attempts to divide paragraphs (1) through (8) of Section 9(b) into two separate or different modes of adjustment, contemplating two severable transactions (p. 590). However, it is interesting to note that the Court, in its outline of the facts leading to the net credit to the Government (pp. 587-8), did not treat those paragraphs as providing two different modes of adjustment. Instead each of the paragraphs providing for a credit to the applicant or to the Commission was given effect by the Court (p. 588). However, in its subsequent analysis of these paragraphs (at p. 590), that Court attempted to distinguish between the credits and adjustments in the first three³⁶ paragraphs and those in the last four paragraphs of that section. In so doing, the Court inexplicably but erroneously ignored the clear wording of the initial paragraph of Section 9(b) that "*Such adjustment shall be made as hereinafter provided, . . . The amount of such adjustment shall be determined as follows:*" followed by eight numbered paragraphs. The Court attempts to bolster this position by stating that Plaintiff admits that, if the statute stopped after the first three paragraphs, the adjusted purchase price would be the statutory sales price.³⁷ However, this admission simply recognizes the plain and literal reading of this isolated seg-

³⁶ Actually first four paragraphs, although Paragraph (4) did not apply in that case.

³⁷ See p. 587, note 4; and p. 590.

ment of the statute³⁸ followed by the application of the usual Code rules thereto.³⁹

However, the District Court then goes on to support its bifurcation of Section 9(b) by pointing out how the statu-

³⁸ Note the difference between Section 9(c) of the Senate amendment of H. R. 3603, Appendix C, *infra*, p. C-3, which provides that "The amount of the adjustment under this section shall be the excess of (1) the purchase price of such vessel . . . over (2) the statutory sales price of the vessel . . . and Section 9(b) of the Act, as adopted, which provides that "The amount of such adjustment shall be determined, as follows: . . . Although the statute is quite awkwardly worded, one can determine the adjusted purchase price without having such price actually set out in so many figures. Nowhere in the Interim or Final Contract between Petitioner and the Government is the adjusted purchase price set out. However, if two persons enter into a contract for the purchase and sale of property, which contract provides for the amount of the cash payment and the amount for which purchaser is obligated to pay in the future, as evidenced by a note and secured by a mortgage, no one would deny that the sum of those two amounts would be the purchase price, even though such sum was not, in fact and as such, set out in the contract. This is the situation at hand. The original purchase price and the cash payments made thereon through March 7, 1946, have been stipulated by the parties. Therefore, in arriving at the adjusted purchase price where the original cash payments and the balance of the mortgaged indebtedness prior to the application of Section 9 are known, any refund of, or payment in addition to, the payments already made, and any adjustment in the remaining mortgage indebtedness would enable any one by simple addition and subtraction to ascertain the adjusted purchase price.

³⁹ Had Section 9(b) stopped after paragraph (3), Petitioner would have been credited with \$11,735,950.74 under paragraph (1), which applied against the total cash paid as down payment and in reduction of mortgage indebtedness through March 7, 1946, of \$16,235,466.21, would have left Petitioner with a cash investment in the vessels of \$4,449,495.47 (R. 44), and if Petitioner's remaining mortgage indebtedness, as of March 7, 1946 had been adjusted under paragraph (2) and (3) to \$13,185,928.93 (R. 45), the sum of the adjusted mortgage indebtedness plus the cash paid would have been \$17,997,981.84, the statutory sales price. (R. 49) See computation X, Appendix E, *infra*, E-3. This would have been Petitioner's investment in, and therefore the cost basis of, the vessels. This would follow, however, not from any provision in the Act fixing statutory sales price as the basis for Section 113 purposes but by reason of the usual rules under Section 113.

tory language in paragraphs (5) and (6) differs from that in paragraph (3).⁴⁰ The Court then follows the Government's argument and looks only to the respective credits called for under paragraphs (5) through (8), ignoring entirely the fact that paragraph (1) also calls for the making of a credit.⁴¹ The Court then concludes (p. 590): "... These sections look to the immediate exchange of cash after all the credits and debits have been added; Congress has so provided. The *two different modes of adjustment* suggest that Congress contemplated *two severable transactions*." (emphasis added). However, if the credit required under paragraph (1) is included with the credits required under paragraphs (5) through (8), as so clearly required by the statute,⁴² the results reached by the Court, and argued for by the Government, do not follow. If all of the paragraphs of Section 9(b) are applied, as plainly and literally required by the Act, in the same manner as paragraphs (1) through (3) were applied above to arrive at an adjusted purchase price equal to the statutory sales price (on the assumption the adjustment stopped there), a net cash credit is due Petitioner of \$2,917,112.19. This is so found and so provided in ARTICLE 4 of the Final Agreement between Petitioner and the Government. (R. 56) If this

⁴⁰ The former two start out "the Commission [or the applicant] shall credit the applicant [or the Commission] . . ."; whereas, paragraph (3) provides that "The adjusted mortgage indebtedness shall be an amount equal to . . ." See appendix A, *infra*, A-6 and A-7.

⁴¹ "(1) The Commission shall *credit* the applicant with the excess of the cash payments made upon the original purchase price of the vessel over 25 per centum of the statutory sales price of the vessel . . ."

⁴² Paragraph (8) clearly states "There shall be subtracted from the sum of the credits in favor of the commissions *under the foregoing provisions of this subsection* . . . and there shall be subtracted from the sum of the credits in favor of the applicant *under the foregoing provisions of this subsection* . . ." (emphasis supplied).

had been paid in cash, as paragraph (8) provides, and as the Delaware Court recognized,⁴³ Petitioner would have received back this sum and therefore its investment in, and the cost basis of, the 18 vessels would have been \$26,680,139.15, the amount contended for by Petitioner.⁴⁴

Then the Delaware Court stated (p. 590): "If the legislature intended that all the adjustments be considered part of cost, it would have been logical to provide that all adjustments be applied first to the mortgage indebtedness."⁴⁵ However, it makes no difference whether the credit had been paid to the Petitioner, in which case, it would have reduced his payments in cash or had been applied against the mortgage indebtedness, thereby reducing his obligation to pay for the property purchased. In either case, so far as determining the cost of the property to the taxpayer and its tax basis, the result would have been the same. However, in the Interim Agreement entered into by the Petitioner and the Government on December 30, 1946, it was agreed (ARTICLE XII) that the net credit to Petitioner "shall be credited by the Commission on the adjusted mortgage indebtedness of the Applicant and applied on the unpaid installments thereof with respect to such vessels as may be designated by the Applicant." This Agreement was carried out by ARTICLE 5 ("Mortgage Adjustment and Disposition of Applicant's Net Cash Credits") in the Final Agreement (R. 56)⁴⁶.

⁴³ "These sections look to the immediate exchange of cash after all the credits and debits have been added". (p. 590)

⁴⁴ See computation XI, Appendix E, *infra*, E-3.

⁴⁵ Citing note 17 in which it stated: "It should be noted that the Commission, in this case, actually applied all the adjustments against the mortgage. This is conceded to be erroneous and contrary to the statute."

⁴⁶ However, the Delaware Court was quite in error in its observation in note 17 because the action which the Court termed as

The Delaware Court also said that the provision of Section 9(c)(2) limiting the Government's liability for the loss of a vessel adjusted under Section 9 and chartered to the Government, to the statutory sales price depreciated to the date of loss, supports the Government's theory, concluding that (p. 591); "... If the new price is not the statutory sales price, this provision is without meaning . . .". This is not so, however. In the absence of this provision, the liability of the Government would have been set by the

"erroneous and contrary to the statute" was required by the Independent Offices Appropriation Act, 1948, 61 Stat. 585, 604, which provided as follows:

"Whenever, in connection with any transaction involving the sale, purchase, or requisition of any vessel, the United States shall be or become obligated to pay any sum to the other party to the transaction and said other party shall be or is indebted to the United States on account of any transaction involving the sale, purchase, or requisition of any vessel, the amount so owing to the United States shall be deducted from the amount due the other party, and no officer or employee of the Government shall pay to such other party a sum greater than the net amount owing the other party."

This provision is written in terms purporting to be of general application. However, its legislative history shows unequivocally (1) that Congress was of the opinion that the "net cash credit" or "cash adjustment" computed pursuant to Section 9(b)(8) of the Act was for the purpose of determining a part of the refund or rebate in purchase price granted under Section 9 of the Act, and (2) that the specific and primary purpose of the provision was to amend or repeal that part of Section 9(b)(8) which required such part of the refund or rebate in purchase price to be "paid" to the Applicant and to require that it be applied in reduction of any existing mortgage indebtedness on the vessel, as of March 8, 1946. See Hearings on the Independent Offices Appropriation Bill for 1948 before the Subcommittee of the Committee on Appropriations, House of Representatives, 80th Cong., 1st Sess.; H. Rept. No. 589, 80th Cong., 1st Sess., dated June 13, 1947, reporting on the Independent Offices Appropriation Bill, 1948, at p. 31; and *National Bulk Carriers v. Warren*, 82 F. Supp. 511, 513 (D. D. C. 1949).

terms of the charter,⁴⁷ or by the normal rules under Section 902 of the Merchant Marine Act, 1936,⁴⁸ either or both of which may have differed from the statutory sales price (or for that matter from the original purchase price adjusted under Section 9).

Finally the Delaware Court cites (at p. 591) the heading of the statutory section "adjustment for prior sales to citizens" as against the heading in the U. S. Code "price adjustment" in support of its holding for the Government. Even without a heading, however, it is clear that the adjustment can mean only a price adjustment. This would not be a reason to support the Government's position but might follow if, in fact, the Section pertained by language or form to an adjustment other than price.

⁴⁷ See Clause J, amending the First paragraph of Option II of Clause C, Part I, of the charter on the Hastings, Exhibit 59 and also Exhibit 30, both to Plaintiff's Exhibit G. (R. 150, 152, 154-5 and 159-60)

⁴⁸ 49 Stat. 2015, c. 858; 46 U. S. C. 1242 (1952 ed.); subsection (a) of which provides in part; "Whenever the President shall proclaim that the security of the national defense makes it advisable or during any national emergency declared by proclamation of the President, it shall be lawful for the Secretary of Commerce to requisition or purchase any vessel or other watercraft owned by citizens of the United States, or under construction within the United States, or for any period during such emergency, to requisition or charter the use of any such property . . . When any such property or the use thereof is so requisitioned, the owner thereof shall be paid just compensation for the property taken or for use of such property, but in no case shall the value of the property taken or used be deemed enhanced by the causes necessitating the taking or use. * * *"

Subsection (b) pertains to the value of a vessel so requisitioned for use or purchased when it was originally acquired under a construction differential subsidy (with which none of Petitioner's 18 vessels were constructed) and provides in part; "When any vessel is taken or used under authority of this section, upon which vessel a construction-differential subsidy has been allowed and paid, the value of the vessel at the time of its taking shall be determined as provided in section 1212 of this title, * * *" (referring to Section 862 of that statute).

The Third Circuit recognized "that the statute does not specifically state which figure is to be used for applicant's cost basis for depreciation purposes" (p. 410). It cites nothing to show any doubt or ambiguity in the statute but, relying solely on the argument to the contrary of the Government, proceeds to examine the statutory scheme together with the legislative history of the Act. However, it does not even bother to analyze the statute but looks solely to its legislative history. Since it found nothing in the statute either to specifically fix the basis of a vessel for depreciation purposes or to prescribe rules for determining such basis other than the usual ones under the Code, the latter should and do apply.

The majority opinion of the Fifth Circuit gives only a cursory treatment to the language of the Act and even this is coupled with the legislative history of the Act and is stated more in the form of conclusions than analyses. At most it is a brief synopsis of the Government's argument and relies entirely on the opinion of the Delaware Court. Contrast this with the thoughtful and comprehensive analysis of Circuit Judge Cameron, dissenting (p. 133), and with that of the Court of Claims in the *Socony* case and of the Alabama Court in the instant case. After carefully setting out the statutory provisions of Section 9(b) and the computations thereunder, the Court of Claims concluded as follows (p. 913):

"Congress could, of course, have provided that a former purchaser of ships who desired to take advantage of the readjustment of price offered him by section 9 should, as a condition of the readjustment, obligate himself to compute future depreciation on a basis other than actual cost. Congress could have done this expressly, or by writing a text from which such an implication would necessarily result. Con-

gress has not done so expressly, and we do not find that it has shown an intent to do so."

The Alabama Court stated the question at issue and its conclusions as follows (pp. 929-30):

"The defendant sets forth several different methods of adjusting the figures to arrive at its alleged basis. But permeating this issue is a single inquiry: For purposes of computing depreciation under Section 113 of the Internal Revenue Code, are the proper bases the statutory sales prices, as defined in Section 3(d), or the actual economic investment and cost after making the adjustment pursuant to Section 9(b)?"

"... Section 9 of the Act is not a tax statute and it does not purport to provide the tax bases of vessels whose purchase prices have been adjusted thereunder. The tax bases of the eighteen vessels must be determined under the Internal Revenue Code. Sections 23(n) and 114(a) thereof provide for the allowance of depreciation computed on the basis of the property as determined under Section 113. Section 113(a) sets forth the general rule applicable to the present case as follows: 'The basis of property shall be the cost of such property * * *'.

"I agree with plaintiff that the cost basis in the instant case can best be determined by comparing the economic cost of the vessels to the plaintiff the moment before and the moment after the Act became effective. The parties have stipulated that plaintiff's economic investment in the vessels as of March 7, 1946, was \$47,149,043.42. The parties also stipulated that as a result of section 9 adjustments the original mortgage indebtedness was reduced \$20,468,904.07. This latter sum, plus a cash payment of \$86,037.70 as of March 8, 1946, left an outstanding mortgage indebtedness of \$10,182,779.04 on March 8, 1946.

"The court finds the plaintiff's economic investment in these vessels, and consequently its cost basis of the vessels as of March 8, 1946, to be \$26,680,139.35

... 77 49

4. Lower Courts erroneously referred to legislative history of Section 9 of Act.

Not a one of the lower courts, either on original trial or on appeal, have pointed to any word or phrase or part of Section 9 as having or leading to a doubtful or ambiguous meaning. They have recognized that there is no specific provision in Section 9 of the Act fixing the basis of a vessel, whose original purchase price is adjusted, for purposes of depreciation and have pointed to no provision providing, or from which it may be inferred, that such basis shall not be determined under the usual Code provisions and rules. Under such circumstances, these Courts were in error in going beyond the clear wording and provisions of the Act on the grounds that the intent of Congress was not clear or that the statute was possibly ambiguous (not by its wording but simply because the Government argued for an interpretation without support in the language and form of the Act).

The usual rule has been stated that "Where the language is plain and admits of no more than one meaning, the duty of interpretation does not arise, and the rules which are to aid doubtful meanings need no discussion." *Caminetti v. United States*, 242 U. S. 470, 37 Sup. Ct. 192; 61 L. Ed. 442 (1916). Chief Justice Vinson, speaking for this Court in *Ex parte Collette*, 337 U. S. 55, 61, 69 Sup. Ct. 944, 93 L. Ed. 1207 (1949), put the matter, in a similar situation, as succinctly and emphatically as pos-

⁴⁹ See also *Barber Oil* at pp. 459-60.

sible: "Petitioner's chief argument proceeds not from one side or the other of the literal boundaries of Section 1404(a), but from its legislative history. The short answer is that there is no need to refer to the legislative history where the statutory language is clear. 'The plain words and meaning of a statute cannot be overcome by a legislative history which, through strained processes of deduction from events of wholly ambiguous significance, may furnish dubious bases for inference in every direction.'" *Gemsco, Inc. v. Walling*, 324 U. S. 244, 260, 89 L. Ed. 921, 933, 65 Sup. Ct. 605 (1945). This canon of construction has received consistent adherence in our decisions." (with note, citing cases).⁵⁰

In *Commissioner v. Korell*, 339 U. S. 619, 70 Sup. Ct. 905, 94 L. Ed. 1108 (1950), this Court, recognizing that Congress could have provided for a more narrow definition of the term "premium" in the statute there being construed so as to disallow an amortization deduction and thereby increase the tax, concluded (pp. 615-6):

"But we cannot reject the clear and precise avenue of expression actually adopted by the Congress because in a particular case we may know, if the bonds are disposed of prior to our decision, that the public revenues would be maximized by adopting another statutory path . . . it cannot be argued that Congress lacked the legislative discretion to have reached such a conclusion."

When Congress passed amendatory legislation to meet this decision, this Court was shortly faced with the construction of the amendment and particularly which call

⁵⁰ In general, see Sutherland, *Statutes and Statutory Construction* (3rd Ed. by Horach), Vol. 2, Sections 4502-3 and 4706.

price applied. This Court, in holding for taxpayer in *Hanover Bank v. Commissioner*, 369 U. S. 672, 82 Sup. Ct. 1080, 8 L. Ed. 2d 187 (1962), concluded (p. 687):

“A firmly established principle of statutory interpretation is that ‘the words of statutes—including revenue acts—should be interpreted where possible in their ordinary everyday senses.’ *Crane v. Commissioner*, 331 U. S. 1, 6. The statute in issue here, in plain and ordinary language, evidences a clear congressional intent to allow amortization with reference to any call date named in the indenture. Under such circumstances we are not at liberty, notwithstanding the apparent tax-saving windfall bestowed upon taxpayers, to add to or alter the words employed to effect a purpose which does not appear on the face of the statute . . .”

Since the statutory language here is clear, the applicable statutory rule of construction is, therefore, well established by the foregoing decisions. The statute should be given its plain meaning.

5. The Lower Courts erroneously interpreted the legislative history of Section 9.

Although contending that the statute is clear and unambiguous in its provisions and organization, making unnecessary any resort to extrinsic aids for the purpose of interpretation of its meaning, intent and effect, Petitioner recognizes that the American rule, unlike the English rule, allows the examination of the legislative history of a statute for purposes of construction and interpretation. However, where the meaning of the statute on its face or by its terms is clear, then such search should not be for

the purpose of raising doubts where none existed,⁵¹ or if such doubts are raised by such search, then the meaning should be the otherwise undoubtful meaning of the statute.⁵²

- (a) The legislative materials considered by the lower courts either were not relevant or did not support Government's contention.

Since the statute itself is clear, the position of the Government, and of the lower courts cannot be sustained if a study of the legislative environment⁵³ either (1) fails to

⁵¹ *Railroad Commission of Wisconsin v. Chicago B & O Railroad Co.*, 257 U. S. 563, 589, 42 Sup. Ct. 232, 66 L. Ed. 371 (1922). ("... Committee reports and explanatory statements of members in charge, made in presenting a bill for passage, have been held to be a legitimate aid to the interpretation of a statute where its language is doubtful or obscure. (citing case) But when, taking the Act as a whole, the effect of the language used is clear to the Court, extraneous aid like this cannot control the interpretation. (citing cases) Such aids are only admissible to solve doubt, and not to create it. For the reasons given, we have no doubt in this case.")

⁵² *Association of Westinghouse Salaried Employees v. Westinghouse Electric Corp.*, 348 U. S. 437, 441, 75 Sup. Ct. 489, 99 L. Ed. 510 (1955). ("This examination would conclude the construction of the section by English Courts, that is, by any court reading legislation as it is written without drawing on parliamentary debates. And considering that the construction that we have found seems plain, the so-called 'plain meaning rule' on which construction is from time to time rested also in this Court, likewise makes further inquiry needless and indeed improper. But that rule has not dominated our decisions. The contrary doctrine has prevailed. (citing cases) And so we proceed to an examination of the legislative history to see whether that raises such doubts that the search for meaning should not be limited to the statute itself.")

⁵³ *Sims v. United States*, 359 U. S. 108, 112, 79 Sup. Ct. 641, 3 L. Ed. 2d 667 (1959). "Intent" of Congress with regard to any law passed by it is at best nebulous, when one considers the number of members in each house, the various reasons, expressed or unexpressed, why each member constituting a majority supports the bill and numerous other contingent and unknown factors. How-

show the specific intent or meaning contended for by the Government or (2) shows no intent or meaning. A mere raising of doubt as to the intent will call for the return to the meaning as indicated on the face of the statute. The meaning or intent for which this search is made relates to the tax cost basis of a vessel whose original purchase price is adjusted pursuant to Section 9 of the Act.

The Act had its genesis as early as the 78th Congress, Second Session (1944) when H. R. 4486 was introduced and hearings on that bill were held before the Committee of the Merchant Marine and Fisheries of the House of

ever, where the statute is quite complex and controversial, the task of ascertaining Congressional "intent" as to each provision is most difficult, if not impossible. The Act is just such a complex statute and was under consideration in two different Congresses over a period of two years.

"The bill is one of the most difficult bills that I have had anything to do with in my 27 years of service in this House. It far exceeds the 1936 Act, which was considered by the Committee on Merchant Marine and Fisheries while I was serving as chairman. These are more complications; less unanimity among interests that ought to be united in presenting a bill. More questions have arisen than in any other bill we have considered. Its preparation has taken much more time than I could have desired and believed was possible, because we have gone over the bill many times, considered many points, and tried to reconcile as nearly as we could, the various opposing interests. I doubt very seriously that any member of the committee would endorse every provision of the bill. It is a result of compromise . . ." (Chairman Bland, Committee on Merchant Marine and Fisheries, 97 Cong. Rec., Part 7, p. 9162).

"Mr. Chairman, this has been a very involved, controversial and complicated piece of legislation to work out . . ." (Mr. Bradley, *op. cit. supra*, p. 9164).

"Mr. Chairman, this bill H. R. 3603, is perhaps the most complicated and technical measure which has been before this body in more than a year . . ." (Mr. Bark, *op. cit. supra*, p. 9192).

"Mr. Chairman, at the outset the House should know the long and tedious work the Merchant Marine Committee has given the four different bills that have been presented to it dealing with this subject . . ." (Mr. Bonner, *op. cit. supra*, p. 9193).

Representatives.⁵⁴ Under this bill, Petitioner would have received an adjustment in its sales price sufficient to reduce that price to an amount equal to the statutory sales price. Thus its economic investment in, and cost basis of, these vessels for tax purposes would have been an amount which also was equal to the statutory sales price.⁵⁵

As a result of these hearings, another bill, H. R. 5213, was introduced in that session of the Congress. This was referred to the same House Committee, but was not reported out. Subsection (e) of Section 1 of that bill was similar to the same section of H. R. 4486.⁵⁶ However, a substitute text was proposed by the Committee and printed on November 16, 1944.⁵⁷ Again Section 5 of the substitute bill, headed "Adjustment of Prior Sales", the same adjustment in purchase price would have been made to the vessels of Petitioner with the same result, i.e., the cost basis to Petitioner after receipt of the adjustment would have been an amount which was equal to the statutory sales price.

⁵⁴ See H. Rep. No. 831, 79th Cong., 1st Sess., to accompany H. R. 3603, dated June 28, 1945, House Committee on the Merchant Marine, 1945 U. S. Code and Cong. Ser., p. 1086. See H. R. 4486, Appendix B, *infra*, B-1.

⁵⁵ See Section 1(e) of H. R. 4486, Appendix B, *infra*, B-3. Although the means and manner of such adjustment were not set out, either (1) the mortgage indebtedness would have been reduced to the difference between the cash payments theretofore made and the statutory sales price, or, in Petitioner's case, \$1,762,535.63 (adjusted for the adjusted value of 4 vessels traded) or (2) the mortgage indebtedness would have been reduced to 75% of statutory sales price (\$13,498,486.37) and a cash refund would have been made to Petitioner in the amount of \$11,735,950.74 (plus adjusted value of 4 vessels). See computation XII, Appendix E, *infra*, E-3.

⁵⁶ See Appendix B, *infra*, B-5 and B-8.

⁵⁷ See Hearings before the Committee on the Merchant Marine and Fisheries, House of Representatives, 79th Cong., 1st Sess., on H. R. 1425, Part 1, p. 463. Appendix B, *infra*, B-12 and B-18.

No action was taken on the bills introduced in 1944 and in the 79th Congress, 1st Session (1945) H. R. 1425 was introduced, referred to the Committee on Merchant Marine and Fisheries of the House and hearings thereon were held by that Committee.⁵⁸ Section 5 of that Bill, entitled "Adjustment for Prior Sales" was the same as section 5 of the Substitute H. R. 5213 proposed at the previous Congress.⁵⁹ For the first time, a bill, S. 292, was introduced in the Senate. This was referred to a Subcommittee of the Committee on Commerce and hearings were held before that Subcommittee.⁶⁰ Section 5 of S. 292 was the same as Section 5 of H. R. 1425.⁶¹ Up to this point in the legislative history of the Act, the present problem could not have arisen inasmuch as economic investment after a price adjustment would be an amount always equal to statutory sales price.

At the conclusion of 10 days of hearing on H. R. 1425 before the House Committee, the bill was then considered in executive session over a period of more than six weeks. As a result of this consideration and the decisions made therein, the Committee requested that a new bill be introduced embodying the decisions and views of the Committee. This new bill, H. R. 3603, was introduced and reported favorably by the Committee to the House.⁶² Section 9 of that bill was entitled "Adjustment in Sales Price of Vessels

⁵⁸ See Hearings Before the Committee on the Merchant Marine and Fisheries, House of Representatives, 79th Cong., 1st Sess., on H. R. 1425.

⁵⁹ Appendix B, *infra*, B-23 and B-29.

⁶⁰ See Hearings before a Subcommittee of the Committee on Commerce, United States Senate, 79th Cong., 1st Sess., on S. 292.

⁶¹ Appendix B, *infra*, B-29, B-35 and B-41.

⁶² See H. Rept. No. 831, 79th Cong., 1st Sess., to accompany H. R. 3603, dated June 28, 1945. See Appendix B, *infra*, B-47.

Sold Prior to Enactment of the Bill," and contained for the first time a price adjustment formula embodying the fiction of treating the prior sale as if the *bill* had been in effect at the time of the *sale*.⁶³

At the time the House considered this bill in October, 1945, an amendment to Section 9 of the bill was proposed on the floor of the House, as the recommendation of a Subcommittee of the House Committee which had reported the bill out. This amended Section 9 was part of the bill adopted on October 2, 1945 and drastically changed the content and approach of Section 9 as contained in original H. R. 3603.⁶⁴ (Original 3603 was the bill referred to and

⁶³ Appendix B, *infra*, B

⁶⁴ See 91 Cong. Rec. 9158-9202 (Part 7); particularly at pp. 9201-2 and 9269-9289, particularly at p. 9281; also Appendix B, *infra*, B

"At a session of the Committee only last Friday morning, however, two far-reaching amendments were adopted by the Committee which should be defeated. These amendments *rewrite and completely change* Sections 9 and 12.

"The circumstances under which the Committee adopted these two amendments are interesting and remarkable. Twenty-one members comprise the Committee. The Committee amendment to Section 9 was adopted by a positive vote of 7 members . . . Thus 7 . . . members . . . out of a committee of 21, made fundamental last-minute changes in a bill on which the Committee had labored for months on end. . . .

"But now at the eleventh hour and the fifty-ninth minute, the Committee proposes an amendment thereto, the text of which was not presented to the Committee until last Friday morning. Those favoring the amendment . . . state that its terms are simple. . . . yet, this 'simple' amendment requires three and one-half pages of closely typed text so involved and complicated as to require the services of a corps of Philadelphia lawyers, certified public accountants and statisticians for a clear understanding . . . (Congressman Buck, *op. cit. supra*, p. 9192). (emphasis added)

" . . . As the bill is presented to you on the floor it is not the bill that the majority of the Committee hoped to see passed by the House." (Congressman Bonner, *op. cit. supra*, p. 9193.)

explained in H. Rept. No. 831.⁶⁵) Despite this drastic amendment of Section 9, however, which resulted in the two versions of Section 9 being quite different and not comparable on this issue, the lower courts erroneously referred to and quoted from the Committee report made *before* the amendment.⁶⁶

The Senate Committee on Commerce was, at that time, holding hearings on S. 292, and on December 4 (legislative day, October 29), 1943, made its report,⁶⁷ in which the Committee recommended a bill striking all the provisions after the enacting clause of H. R. 3603 as passed by the House and containing a substitute version similar to former S. 292.⁶⁸ H. R. 3603, as so amended and recommended by the Senate Committee, was adopted by the Senate. The bills (H.R. 3603 and the Senate amendment of H.R. 3603) were then referred to a Conference Committee. The bill, as reported and recommended to both the House and the Senate by this Committee⁶⁹, was adopted by both the House and the Senate as Public Law 321, effective March 8, 1946.⁷⁰

"Mr. Chairman, if the House adopts this amendment, it will be acting without benefit of knowledge, without benefit of analysis. Under these circumstances the amendment should be defeated" (Congressman Buck, *op. cit. supra*, p. 9283).

⁶⁵ See pp. 12-13 of H. Rept. No. 831; 91 Cong. Rec. (Part 7) 9185 (comments of Congressman Jackson), 9192 (comments of Congressman Buck), 9194 (memorandum of Congressman Bonner), 9197, 9199 and 9282 (comments of Congressman Jackson), 9283 (comments of Congressman Bradley).

⁶⁶ See Delaware Court in *National Bulk*, p. 592, and notes 26 and 31 thereon; also Third Circuit, p. 410 (lengthy quotation from Report).

⁶⁷ S. Rep. No. 807, 79th Cong., 1st Sess., Committee on Commerce, to accompany H. R. 3603, dated December 4, 1945.

⁶⁸ Appendix B, *infra*, B-78.

⁶⁹ See Conf. Rep. No. 1526, 79th Cong., 2nd Sess., to accompany H. R. 3603, dated February 6, 1946.

⁷⁰ Appendix B, *infra*, B-96.

The lower courts also referred to and relied upon the Senate Report, which, like the House Report, concerned a Section 9 which was quite different from that contained in the bill as finally adopted.⁷¹

- (b) The lower courts erroneously interpreted the legislative history of Section 9 and arrived at the wrong conclusion as to its purpose and effect.**

Petitioner contends that a correct analysis of the legislative history of Section 9 will conclusively show (1) that

⁷¹ See Delaware Court in *National Bulk*, p. 592, and notes 27, 29 and 30; also Third Circuit, p. 410. In fact, the Delaware Court drew the following conclusion (pp. 592-3):

"The logical conclusion to be drawn from both the House and Senate reports is that at all times, the Congress had only one idea in mind—to treat the Section 9 applicants as if they purchased on the date the Act was passed."

This in the clear face of the fact that Section 9 in both original H. R. 3603 and Senate amendment to 3603 provided for the fiction that for purposes of an adjustment in the price of a vessel sold prior to the Act, the Act will be considered to have been in effect *at the time of the sale*. See Appendix B, *infra*, B-57 and B-90. In fact, in H. Rept. 831 the Committee explained Section 9 as follows (at p. 12): "The effect of making the adjustment is the same as if the bill had been enacted at the beginning of the war period and all sales during the war period had been at the statutory sales price." This shows the fallacy and danger of improper use of legislative materials.

Under similar circumstances, the Court of Appeals for the Second Circuit had the following to say in *U. S. v. Lincoln Rochester Trust Co.*, 297 F. 2d 891, 892-3 (1962) *cert. denied*, 369 U. S. 887 (1962): "... The District Court relied on House Report No. 1027, 85th Cong., 1st Sess., 1957, which accompanied H. R. 8881, passed by the House which contained a specific provision that although the surviving spouse must have the authority to give the property away it need not include the power to dispose of the property by will. H. R. 8881, however, never became law as written and passed by the House. H. R. 8381 which became Section 92(a) of the Technical Amendments Act of 1958, made no mention of the issue. The language referred to in this report relied on by the District Court was not included in the Act as it finally was adopted. No reliance can therefore be placed on this portion of the Report in interpreting the Act."

application of Section 9 will not, and was not intended to, reduce the adjusted price to the statutory sales price, (2) that the sponsors of amended Section 9 (as adopted) had only the immediate cash effect on the Government in mind and that there was *no* Congressional "intent" as to the effect of the Section 9 price adjustment on the tax basis of such a vessel, and (3) that the sponsors could not have intended, as the lower courts held, to put pre-Act and post-war purchases on an *equal* basis for all purposes, including tax cost, since this is impossible; but that the most Congress hoped for was to place them on a *comparable* basis as to cash effect and to be *fair*. The lower courts arrived at the opposite conclusion as to each of these points and, in doing so, grievously erred.

An analysis and study of the comparable provisions of Section 9 in the final bills considered, rejected, amended and adopted by the two Houses of Congress may be helpful in resolving the issue at hand.⁷² First, with minor exceptions, Section 9 of H. R. 3603, as originally proposed by the House Committee, and Section 9 of the Senate amendment of H. R. 3603 (like S. 292) were very similar. It was only upon the amendment of Section 9 of H. R. 3603 on the floor of the House which amended Section 9 was included in the bill as passed by the House and as adopted subsequently by both Houses, that that section differed materially as to provisions and effect from Section 9 of both original 3603 and Senate amendment of 3603. Since the provisions and plan of original 3603 and Senate amendment of 3603 are

⁷² A comparison of the provisions of Section 9 of original 3603 (as recommended by the House Committee), of H. R. 3603 (as passed by the House), of the Senate amendment to 3603 (as recommended by the Senate Committee and passed by the Senate), and of P. L. 321 (the Act as enacted) is attached as Appendix C, *infra*.

materially similar, the comparison will then be between 3603, as amended and adopted in the House (referred to for convenience as the "House bill"), and Senate amendment of 3603 (referred to for convenience as the "Senate amendment") (with comments as to changes from both in the Act as enacted).

Section 9 of the House bill contained four subsections, whereas there were six subsections under Section 9 of the Senate amendment. Subsection (a) of both are the same, and subsection (d) of the House bill is quite similar to subsection (f) of the Senate amendment. Therefore, these will be ignored in this discussion. Subsection (b) of the House bill and subsection (c) of the Senate amendment shall be referred to as the "adjustment sections" since they provided for the price adjustment. Subsection (e) of the House bill and subsection (d) of the Senate amendment shall be referred to as the "conditions sections" since they imposed condition upon the acceptance of the price adjustment. The House bill had no counterparts to subsections (b) and (e) of the Senate amendment.

The "adjustment section" of the Senate amendment provided that the "amount of the adjustment under this section shall be the excess of" followed by only two paragraphs, the first of which simply sets out the original purchase price of the vessel, depreciated or amortized to the date of enactment of the Act, and the second of which sets out the statutory sales price of the vessels, as of the date of enactment of the Act, with certain adjustments. The difference between the two paragraphs is such excess and is the amount of the adjustment. However, the "adjustment section" of the House bill contained eight paragraphs, each of which entered into, and was a material part of, the determination of the "amount of such adjustment." It

was in this version that for the first time the price adjustment to be secured by an owner did not reduce the purchase price to an amount equal to the statutory sales price.

In the "conditions section" of the Senate amendment, there are four paragraphs as compared to three paragraphs in the "conditions section" of the House bill. The major points of difference are four. First, the House bill contained no provision similar to paragraph (4) of the Senate amendment (but this is not important in the issue at hand). Second, paragraph (1) of the Senate amendment provided for a *refund* to the Government of charter hire paid by it in excess of 15% of adjusted price.⁷³ Third, all limitation for use or loss of a vessel was based on "adjusted purchase price" in the Senate amendment and on "statutory sales price" in the House bill. Last, paragraph (1) of the House bill provided for the tax effect of certain (but not all) adjustments to be made in the "adjustment section."⁷⁴

Under the Senate amendment, there were two computations, one in the "adjustment section," which was an adjustment in the purchase price (consisting of (1) a reduction in the balance of the mortgage indebtedness, if any, and the application thereagainst, if there were such a mortgage indebtedness, of any cash refund due to the applicant, or (2) a cash refund if there were no mortgage indebtedness or if any cash remained after satisfaction of the mortgage indebtedness), and the other in the "conditions section," which was a computation of the excess charter hire to be

⁷³ In the House bill the computation of excess charter hire was provided for in the "adjustment section," rather than in the "conditions section" as in the Senate amendment.

⁷⁴ In the Senate amendment *all* tax provisions were contained in a completely separate subsection of Section 9 (subsection (e)).

refunded by the owner to the Government, less certain credits thereagainst at the option of the owner.

Under the House bill, all computations were included in the "adjustment section," except the recomputation of the taxes of the applicant for the tax years between the year of acquisition of the vessel whose price is being adjusted and the year of the enactment of the bill. After this computation was made, however, it became *one* of the components under the "adjustment section" of the House bill, along with the credit for excess payments made on the purchase price, the adjustment in the mortgage indebtedness, the charter hire credits between applicant and the Government, and the interest credit to the applicant, *all* of which, when netted together, gave *the* adjustment in price and all of which affected, and were a part of the determination of, the basis of the vessel.

Taxes were handled in an entirely separate subsection of the Senate amendment, as to both computation and effect. In the House bill, the computation of taxes was covered in paragraph (1) of the "conditions section," and the effect of such tax computation was covered in paragraph (8) of the "adjustment section." This made clear that, although the tax computation was a condition, its effect was a part of the adjustment in price. Because the House bill treated the sale of any vessel prior to the date of the enactment of the Act as taking place on the latter date, the tax adjustment provisions of the House bill related only to certain events and to the period occurring between the date of original purchase and the date of enactment of the Act; whereas, since the Senate amendment was written on the theory that the Act was in effect at the time of the original purchase and that the original purchase was made under

its terms, the tax provisions of the Senate amendment provided for the redetermination of taxes in *all* tax years from and after delivery of the vessel to the purchaser, and specifically provided that, for the purposes of redetermination of income and excess profit taxes, the vessel "shall be considered as having been acquired at the adjusted purchase price." Thus, the Senate amendment specifically provided for the tax basis of a vessel whose original purchase price was adjusted under the Act; whereas, the House bill, although providing for certain recomputations in taxes, which then became an item in the adjustment of price, did not specifically provide for the new tax basis of a vessel whose price was adjusted.⁷⁵

Congress, in considering and adopting the Act, was free to adopt an act in the form of the Senate amendment or one in the form of the House bill. The applicant would have been bound by the form of such bill either in applying for an adjustment in price or, thereafter, in determining the effect of such adjustment. That the tax effect to an applicant would be different under the two forms of bills does not alter the situation. The fact that Congress selected and adopted one bill should preclude the tax officials from determining the tax basis of the vessels in

⁷⁵ Also, in the Senate amendment, a specific provision was made as to the disposition of the refunds resulting from such redetermination. Paragraph (2) of Section 9(a) of the Senate amendment gave the applicant the option to apply any refund against the remaining mortgage indebtedness in lieu of being credited or refunded to the applicant. However, in the House bill, the overpayment or deficiencies in taxes resulting from the computations in the tax provision of the House bill became one of the credits or factors in the formula used for determining the adjustment in price. See Appendix C, *infra*, C-9.

question in accordance with the other bill considered but rejected by Congress.⁷⁶

Considering H. R. 3603, as originally proposed, the amendment of Section 9 of H. R. 3603 on the floor of the House, of the Senate amendment for H. R. 3603, and the Act as finally adopted (with the changes made by the Conference Committee in the two bills as adopted separately by the two Houses), it can easily be seen that Section 9 of the Act was radically different from that section in the bills as originally proposed and considered by the Committees of each House and on which the reports of each house were based. No longer was Section 9(b) to apply as if the Act had been in force at the time of the original purchase of the vessel; no longer were the transactions that occurred between the purchase of the vessels and the time of the enactment of the Act (such as charter hire paid, interest paid on original mortgage indebtedness, taxes computed on the basis of such charter hire and of depreciation based on the original purchase price) to be unwound; rather, the vessel was to be treated as having been purchased at the time of the enactment of the Act and the original purchase price of the vessel was to be adjusted in accordance with a formula which took into consideration not only the adjusted statutory sales price, in relation to the original purchase price, but other factors which were measured by events occurring between the original purchase and the enactment of the Act (as part of the formula however, by which the adjustment was determined and not by a separate provision as a condition for making an adjustment).

⁷⁶ What was said of the taxpayer in *Curtis v. Commissioner*, 89 F. 2d 736, 738 (8th Cir., 1937) can be applied here to the Government: "... In this situation we must consider and follow what he did and not what he might have done. ..."

What is the difference to the Government and to Petitioner in the results under the Senate amendment and under the House bill, with respect to (a) the tax basis of a vessel whose purchase price is adjusted, and (b) the cash effect of the adjustment on the Government? With respect to the tax basis of a vessel, there is no doubt that under the Senate amendment, by reason of a specific provision, it would have been the adjusted purchase price; whereas, under the House bill, lacking such a specific provision, the tax basis of the vessel would be determined under the normal Code rules. With regard to the cash effect of the adjustment on the Government, such cash effect would be materially less under the House bill than under the Senate amendment. This is most important because the cash effect, not the tax effect or the tax basis, is the sole intent and purpose of the amendments to the House bill offered on the floor of the House. The sole specific "intent" of the Congress with regard to the price adjustment was to the cash effect on the Government not to the tax effect or cost basis to the applicant.

This is emphasized by the different methods of handling the adjustments between the Senate amendment and the House bill. Had the cash effect of the adjustments under the Senate amendment been the same as under the House bill, the resulting tax effect or basis would have nevertheless been different because the cash effect under the Senate amendment did not determine the tax basis (the latter being otherwise specifically provided for); whereas, under the House bill, such cash effect being a part of the adjustment in price, any reduction in such adjustment in the House bill would result not only in a reduction in the cash effect,

but also in a reduction in the adjustment in price and, therefore, a higher tax basis.⁷⁷

This logically explains the following remarks of Congressman Jackson in the debate on the floor of the House on the proposed amendments to H. R. 3603, and particularly of Section 9:⁷⁸

"There has been a feeling that the amount of the adjustment provided for in section 9 of the bill as reported is too high. The committee amendment seeks to cut down the amount of this adjustment and at the same time to be perfectly fair to all concerned—those who bought before the enactment of the bill, those who bought after the enactment of the bill, and the United States.

.

⁷⁷ The adjustment measured by charter hire paid by the Government on a vessel whose price is adjusted is a prime example of this difference. In the House bill, the applicant "shall credit the Commission with *all* amounts paid by the United States to him as charter hire for the use of the vessel." (Paragraph (6), Section 9(b)). However, under the Senate amendment the applicant would be required to *refund* to the United States any charter hire paid by the Government in excess of 15% per year of the adjusted price. (Under the House bill, there would be offset against the total charter hire to be credited to the Government the amount of charter hire that would have been paid by the Government to the applicant on any vessel traded in on the purchase of the vessel whose price is being adjusted (Paragraph (6), Section 9(b)). There was, of course, no corresponding credit to the applicant under the Senate amendment; inasmuch as the Senate amendment still treated the sale—and therefore the trade-in—as having taken place on the date of delivery of the vessel.) The net effect, as to Petitioner, of the differences in treatment of charter hire, can be seen in computation XIII, Appendix E, *infra*, E-4. The cash difference or effect on this one item alone is \$3,380,328.30 (When this is applied to all applicants for adjustment and to all vessels subject to such adjustment, it can be easily seen that there was a substantial cash effect (in the form of savings) on the Government in the approach of the House bill as contrasted with that of the Senate amendment.)

⁷⁸ 91 Cong. Rec. 9436-7 (Part 7) (October 2, 1945).

"... The amendment reduces the amount of the adjustment under section 9 substantially and is fair to all concerned.

"I might say incidentally that the adjustments under the bill as originally reported out amounted to \$89,000,000.00. That included a scaling down of mortgage indebtedness owing to the Maritime Commission and a small amount of cash. This amendment reduces that adjustment to the owners down to \$68,000,000.00 or a total saving of \$21,000,000.00." (emphasis added).

All concerned with the bills recognized that legally and morally the Government had to make some adjustment for prior purchases. However, the fears of the cost of such adjustments to the Government and the questions raised by differences in the views of and the effects on foreign and domestic owners, tankers and dry-cargo vessel owners and subsidized and non-subsidized owners permeated the hearings and the debates on the bills. Although the prime object was a healthy merchant marine and the need for a stable price policy for disposition of Government owned vessels to private operators, underlying all discussions on statutory sales price and adjustments in previous purchases was the net return or cost to the Treasury. This was the primary concern of the Congress and fashioned its "intent" with regard to Section 9, an intent, therefore, directed to the cash immediate effect on the Government and not to tax effect or cost basis on vessels whose prices might be adjusted.⁷⁹

⁷⁹ Nowhere in the Committee reports or in the debates is any reference made specifically to the question at hand, the tax cost or basis of a vessel whose original purchase price is adjusted. In

The bills, as adopted in the House and in the Senate, went to a Conference Committee, which reported out a substitute for both bills.⁸⁰ Just as in the debates, occurring in explanation of the amendment to Section 9 on the floor of the House, the statement of the House managers attempts to simplify the explanation of the provisions of the bill and the recommendations of the Conference Committee.⁸¹ Such explanations must then be read carefully in the light of the differences between the House bill, the Senate amendment and the Conference Committee substitute (subsequently adopted by the Congress). The managers attempted in non-technical language and as briefly as possible to set out the differences between the House bill and the Senate amendment as to Section 9 and concluded by saying (at p. 17) that the "conference agreement restores the House provisions on the points stated in the two preceding paragraphs."

It is interesting to note that, whereas in the House bill paragraph (2) of Section 9(b) had cancelled the mortgage indebtedness and provided for a new mortgage indebtedness, paragraph (2) of Section 9(b) of the Conference

Federal Trade Commission v. Sun Oil Co., 371 U.S. 505, 517, 83 Sup. Ct. 358, 9 L. Ed. 2d 466 (1963), this Court stated: "While such language in the congressional materials suggests the reading limiting Sec. 2(b) to the meeting of the seller's own competition, it is, of course, not conclusive since not directed to the specific problem here presented. Neither the briefs nor the arguments of the parties nor of the amici have pointed to any more explicit congressional guide to resolution of the precise question before us. No more can be said than that there appears to be nothing in the legislative history to directly contradict what we deem to be the ordinary meaning of the statutory language or to indicate that a different reading was specifically intended; what few guides there are support the interpretation we here adopt."

⁸⁰ See Conf. Rep. No. 1526, 79th Cong., 2d Sess. (1946).

⁸¹ *Op. cit. supra*, note 80, pp. 17-18.

bill provided only that applicant's mortgage indebtedness "shall be adjusted" and paragraph (3) Section 9(b) of the Conference bill referred to "the adjusted mortgage indebtedness" rather than to "the new mortgage indebtedness" as in the House bill. This change negated any possible idea of the rescission of the old purchase agreement, and further specifically provided that such adjusted mortgage indebtedness shall be payable in equal annual installments thereafter during "the remaining life of such mortgage," a new provision. This language indicates clearly that it was not the intent of Congress to rescind the original transaction and to substitute a new one as of the date of enactment of the Act, as contended by the Government.⁸²

Two other actions of the Conference Committee in recommending language used in the House bill over that in

⁸² The Third Circuit held (p. 412) that "... the foregoing legislative materials and statutory scheme clearly manifest a Congressional intention to effect a rescission of a prior contract of sale, and an adjustment in price to the statutory sales price." Considering the legislative history of the Act, the regulations and the various agreements between the parties it can hardly be said that the previous contracts and mortgages had been annulled, abrogated, cancelled or rescinded. If the Act had provided that the original purchase contracts and all documents in connection therewith were to be annulled, cancelled and rescinded, and new contracts entered into, in which the purchase price of each vessel would be the adjusted statutory sales price, then there would be no doubt that there would be a rescission rather than an adjustment. The mere fact that the Act provided that such adjustment shall be made ... by treating the vessel as if it were being sold to the Applicant on the date of the enactment of this Act ... does not mean that for all purposes (such as existing mortgages or existing charters) all previous contracts and relationships were to be rescinded or annulled. No new notes, mortgages or charters were made by Petitioner to replace those in effect on March 8, 1946. The effect of the difference between rescission and adjustment is illustrated by the case of *The Borria Corporation v. Commissioner*, 39 B. T. A. 712 (1939), aff'd 117 F. 2d 917 (6th Cir., 1941), cert. denied 314 U. S. 638 (1941).

the Senate amendment may throw some additional light on the issue here. In the Senate amendment, under the "conditions section," the applicant must agree that the liability of the United States under any charter party for use and loss of the vessel shall be determined on the basis of "the adjusted purchase price" (with certain further adjustments). The corresponding provisions in the "conditions section" of the House bill provided for the same limitation of liability (except for additional depreciation for war service) but based on "statutory sales price."⁸³

The Conference bill restored the House version on these points.⁸⁴ Thus, the bill, as adopted, used the term "statutory sales price" instead of the term "adjusted purchase price." The only explanation for the adoption of the language in the House bill is the fact that under the House bill the adjusted purchase price of a vessel would be different from the statutory sales price.⁸⁵ This is a clear recognition of the difference in the approach and effect of the

⁸³ See comparison in Appendix C, *infra*, C-7 and C-8.

⁸⁴ Omitting the additional 3 per centum per annum war service depreciation, however.

⁸⁵ Although the term "adjusted purchase price" is not defined in the Senate amendment, it is used only in subsections (d) and (e) after the "adjustment section" and therefore logically refers to the adjusted purchase price specified in subsection (e). It is clear that under the Senate amendment the adjusted purchase price would be the statutory sales price. However, that would not necessarily mean that this price would be the tax basis for such vessel and so the Senate amendment specifically provided in subsection (e) ("tax section") that it would be. If the adjustments under the "adjustment section" of the House bill resulted in an "adjusted purchase price" equal to the "statutory sales price," then there would have been no need to use the House bill language in lieu of the Senate amendment language. See, however, the opposite conclusion reached by the Delaware Court in *National Bulk*, pp. 585, 591: "If the new price is not the statutory sales price, this provision is without meaning."

two bills. The effect of the adjustment in the Senate amendment would be to make the adjusted purchase price the same as the adjusted statutory sales price. However, since none of the adjustments in the House bill were treated separately as mere conditions of obtaining the adjustment but were made a part or a measure of the adjustment itself, the presence of cash credits or adjustments in that section of the House bill, other than the credit pertaining to the cash payments in excess of 25% of the statutory sales price (contained in both the House bill and the Senate amendment), would cause the adjusted purchase price to differ from the adjusted statutory sales price. This is the point contended for by Petitioner and is supported by the action and recommendation of the Conference Committee and of the two Houses in adopting the Conference bill.

Also, as previously pointed out, Section 9(e)(1) of the Senate amendment specifically fixed the tax basis of a vessel, whose original purchase price was adjusted, at the "adjusted purchase price." No comment is made in the Conference Report as to why this provision was omitted in the final bill. However, it does not appear in the Act, as adopted, and there is no similar specific provision anywhere in the Act. There can be only one inference from this omission. Either the matter was overlooked by the Congress in the consideration of the differing bills and in the recommendation of the Conference Committee as to the bill to be enacted, or the Congress intentionally left the tax basis of such vessels to be determined under the usual rules of the Internal Revenue Code then in effect, after giving effect to the adjustment in price under Section 9(b) of the Act.⁸⁶ Since the Senate considered this matter and made a

⁸⁶ See *Western Union v. Lenroot*, 323 U. S. 490, 500-1, 65 Sup. Ct. 335, 89 L. Ed. 414 (1944).

recommendation on the point, which was before the Conference Committee, it could hardly be said to have been overlooked. As pointed out very ably by Circuit Judge Cameron, dissenting in the Fifth Circuit (at p. 134):

“When Congress intended that its acts authorizing the redetermination of the price of ships purchased under our various subsidized ship procurement programs would also determine the basis of property in a manner differing from Section 113(a), *supra*, or would determine other factors affecting income tax liability of purchasers, it has always said so specifically.” (citing examples in the footnotes thereto).⁸⁷

The lower courts made as a major premise for their conclusions a Congressional intent to put pre-Act and postwar purchasers on an *equal* basis.⁸⁸ The myriad factors involved in attempting to equalize such purchasers mitigate against any such intent. In addition the impossibility of achieving any such result confirms no such intent would have been either reasonable or likely. Finally, the resulting legislation falls so far short of even attempting to achieve full equality that this major premise seems demonstrably erroneous by reference to the statutory provisions about which there is no controversy.

⁸⁷ See also the lengthy comment on this point by Judge Madden in the *Socony* case, at p. 913.

⁸⁸ Fifth Circuit (at pp. 132-3): “. . . It was clearly the intention of Congress to put pre-enactment purchasers and post-enactment purchasers on the same basis, that of the statutory sales price. The Delaware Court (at p. 591): ‘After studying the legislative history of Section 9, one inescapable conclusion concerning legislative intent appears. Congress meant to put pre-Act and postwar purchasers on exactly the same basis—their shoes were to be interchangeable. Using this fact as a major premise, it becomes clear that all buyers were to pay one price, the statutory sales price . . .’”

In fact, fairness, not equality, was the most that could be hoped for. This was a most complex and difficult piece of legislation and Section 9 posed problems in addition to those faced in the other sections of the Act. The views of the shipping industry were quite divergent as were those of the members of Congress who worked on the legislation. The results were a compromise of interests and views.⁸⁹

Section 9 was included in the Act because all recognized that purchasers of vessels prior to the Act would suffer

^{89.} "Section 9 of H. R. 3603 provides for a refund to operators who purchased vessels during the war at war cost, . . . Such an adjustment is fair . . . However, Section 9 contains many loopholes, which in my opinion places the wartime purchaser in a far better position than future purchasers. . . If there is to be equality between past and future purchasers there must be comparable terms and nothing less . . ." (91 Cong. Rec. 9182, Part 7, Congressman Jackson)

"Whether the provisions of the bill are the best possible in this respect, nobody can say, but I feel perfectly confident in saying that no one is likely hastily to improvise anything better." (91 Cong. Rec. 9197, Part 7, Congressman Jackson)

"There has been a feeling that the amount of the adjustment provided for in Section 9 of the bill as reported is too high. The Committee amendment seeks to cut down the amount of this adjustment and at the same to be perfectly fair to all concerned—those who bought before enactment of the bill, those who bought after the enactment of the bill, and the United States.

" . . . The amendment reduces the amount of the adjustment under Section 9 substantially and is fair to all concerned." (91 Cong. Rec. 9282, Part 7, Congressman Jackson)

" . . . Provisions to allow such adjustment were included in the bill. They have been the subject of considerable controversy as to proper implementation of the admitted desirability of proper adjustments to place prior purchasers and postwar purchasers of similar vessels on a comparable basis . . . Again, the Committee has resolved these discussions in a manner which it believes to be fair to the Government and to the parties concerned. The amount involved under different plans has been subordinated in the minds of the Committee to the desirability of arriving at fair adjustments, but at the same time the Committee has not found it practicable to provide adjustments which would satisfy to the fullest extent the natural desires of every private purchaser the most favorable treatment in the light of his particular situation." (S. Rep. No. 807, *supra*, note 67, p. 6)

"an unwarranted discrimination unless the price at which they purchased or agreed to purchase these vessels is adjusted to conform to the statutory sales price prescribed in the bill."⁹⁰ The problem was how to do this and at the same time "to put everybody on the same basis as of the date of the enactment of the legislation."⁹¹ The lower courts evidently felt that Public Law 321 achieved this purpose (according to the Government's and their interpretation) but only if the statutory sales price should be the tax basis for a vessel purchased prior to the Act and whose original purchase price was adjusted under the Act. No criticism is intended of Congress in noting that there were many ways other than price in which those purchasing prior to the Act suffered economic disadvantages in comparison with those purchasing under the Act. It simply indicates that there was no way to completely equalize such purchasers or to put them in *exactly* the same position. The following discussion simply points out a few of the more important elements not taken into consideration in the Act.

An applicant was given no credit or allowance (1) for State income taxes paid by applicant on the charter hire received prior to the enactment of the Act and credited to the Commission under paragraph (6) of Section 9(b),⁹² (2) for depreciation on any vessel traded in and of which, under the fiction of Section 9, he was treated as the owner until the date of enactment, and (3) for any interest

⁹⁰ H. Rep. 831, *supra*, note 62, p. 12.

⁹¹ Words of Congressman Bradley, 91 Cong. Rec. 9438, Part 7.

⁹² In the State of Alabama alone, a corporation income tax of 3% was imposed on Petitioner in the years in question. Title 51, Section 398, Code of Alabama (1940).

on overpayment of taxes credited to applicant under paragraph (8) as computed under Section 9(c)(1) of the Act, as is the usual case in the refund of taxes.

An applicant was given no allowance or credit for normal overhead or fixed cost, which resulted, or accrued by reason of Petitioner's having been the actual owner of the vessel during the period between purchase and date of the Act.⁹³

The liability of the United States for use or loss of any vessel under charter to it, whose original purchase price was adjusted under Section 9(b) of the Act, would be limited to 15% per year of the statutory sales price of such vessel for use, and to statutory sales price less depreciation to date of loss for loss. However, as to any vessel purchased after enactment of the Act, the owner thereof would not be limited as to either the amount of charter hire due for use or to the amount of compensation due for loss of such vessel.⁹⁴

⁹³ Evidently, this was on the assumption that the entire charter hire paid by the Government to the applicant was clear profit and the return or credit of the same to the Government did not result in applicant's absorbing any cost attributable to the ownership of the vessels during that period prior to the Act. However, during the period in question, these vessels were subject to the property taxes assessed and levied by the State of Alabama, the domicile or home port of these vessels having been in Mobile, Alabama. (R. 149) Title 51, Section 21, Code of Alabama (1940). However, if the Senate amendment had been enacted, applicant would have at least received charter hire on 16 vessels at the rate of 15% per annum on the statutory sales price, thereby covering that and similar such costs.

⁹⁴ In the 83rd Congress, 1st Session, H. R. 7065 and S. 1918 were introduced to amend Section 9(c)(2) and (3) of the Act so as to correct this inequity. Hearings were held before the Committee on Merchant Marine and Fisheries of the House and before the Committee on Interstate and Foreign Commerce of the Senate. The Senate Bill was approved by the Senate on May 4, 1954 but no action was taken in the House. In the next Congress, H. R. 8352 and S. 3113 were introduced, this time to amend Section 9(c)(2) of the Act only, with the provision, however, that it would not be

Petitioner was required to pay the adjusted mortgage indebtedness over the remaining life of the original mortgages (16 years and 4 months as to the *Fairisle* and 20 years as to the John B. Waterman (R. 163)).⁹⁵ However, anyone purchasing under the Act and after its enactment would have been entitled to pay the balance due on the purchase price, after payment of 25% of the statutory sales price, over a 20-year period, thereby giving such purchaser a longer period of pay-out with lower annual payments and at the low interest rate of 3½%.⁹⁶

retroactive in application but would apply only to any charter party executed on and after a specific date. This bill became law on August 6, 1956 (c. 1013, 70 Stat. 1068; 50 U. S. C. App. Section 1742 (c)(2)).

⁹⁵ Actually because payments were continued to be made in the amounts called for by the original mortgages, which were in excess of the payments on the adjusted mortgage indebtedness, which excess under the Interim Agreement, Article XVI, could be applied against such unpaid mortgage instalments as designated by Petitioner, certain mortgages by such application were paid in full prior to the date of the Final Agreement among which was the *Fairisle*. (R. 163) However, even as to the *Warrior*, the payments were spread over a period of 17 years and 4 months, rather than the full 20 years.

⁹⁶ Under the House bill, which cancelled the old mortgage indebtedness, the pay-out period of a pre-enactment purchaser would have been the same as a post-enactment purchaser. However, this was amended in conference. Although in the Final Agreement, by reason of the desire of Petitioner to fully apply all available Section 112(f) funds on the purchase prices of the applicable vessels and thereby avoid a tax on such funds, the net cash credit to Petitioner was, in effect, paid to Petitioner by means of reduction in its mortgage indebtedness, this would not have been the case under the Interim Agreement nor would it have been allowed as a result of the Independent Offices Appropriation Act, 1948, 61 Stat. 585, 604, *supra*. Even though, by applying this amount against the remaining adjusted mortgage indebtedness, Petitioner saved interest at the rate of 3% on such mortgages to the extent of such application, Petitioner, doubtless, could have earned a higher return than 3½% on such cash credits. One purchasing after the date of the Act would not have been required to make this additional cash payment.

The income of an applicant was increased disproportionately in the taxable year in which March 8, 1946 fell by reason of treating all of the interest and all of the charter hire credited to the applicant under paragraphs (5) and (6) as having been received in that year under the provisions of Section 9(c)(1) of the Act, instead of accruing such credits ratably over the years in which actually accrued, which was the manner of treatment as to the interest in the House bill, but which was changed in conference.⁹⁷

A very major difference and disadvantage would be the fact that any pre-enactment purchaser who benefited from the ownership of a vessel during that period by either chartering the vessel to someone other than the Government or who used the vessel to carry his own commodities⁹⁸ did not have to account for such earnings by giving a credit to the Commission for such earnings as in the case of a similar purchaser whose sole return from the vessel was the charter hire paid by the Government. These earnings could be used to apply against the purchase price of the vessel without affecting the tax cost or basis of such vessel. However, according to the Government's contention, the credit to the Commission for charter hire paid by the Government will not be treated as a part of the price adjustment and, therefore, of the cost of the vessel.

Thus, by no stretch of the imagination can one say that a pre-Act purchaser, whose original purchase price of a vessel purchased prior to the Act was adjusted thereunder,

⁹⁷ See Conf. Rep. No. 1526, *supra*, note 69, p. 17.

⁹⁸ See *Socony Mobil Oil Co. v. United States*, 279 F. 2d 512, 515 (Ct. Cls., 1960) where, of the 12 vessels purchased prior to the Act and whose prices were readjusted under the Act and which were chartered to the Government, 8 were released from the charter in November, 1945, some 5 months prior to the date of enactment of the Act, during which period they were available for charter or for use by Socony Mobil Oil Co.

and a postwar purchaser stood in the same shoes. Thus, if these two purchasers did not occupy the same position with respect to the above situations, then there is no reason to infer that they should be in the same position with regard to the tax basis of their respective vessels. In the circumstances, only a specific and clear provision to that effect in the statute would have accomplished such a result. Rather than saying, as did the Delaware Court (p. 593), that a "decision for the taxpayer would be contrary to the equitable principles that motivated the Congress to act," it can be said that a decision for the taxpayer here would not only be in accord with the wording of the statute, the intent of Congress and the established principles of the Code but would help overcome some of the inequities accruing to the pre-Act purchasers under the Act.

(c) Having looked to the legislative history of the Act, the lower courts erred in failing to consider the legislative history subsequent to the Act.

The lower court recognized that subsequent expression of opinion by a legislative body as to the meaning of a statute may be an important aid in interpreting that statute.⁹⁹ However, both the Delaware Court and the Third Circuit held that the rule announced in *Fogarty v. United States*, 340 U. S. 8, 71 Sup. Ct. 5, 95 L. Ed. 10 (1950) precluded such subsequent legislative history from consideration.¹⁰⁰ However, it is respectfully contended that, under the circumstances, *Fogarty* does not apply and that the subsequent legislative history is admissible under the holding of *Sioux Tribe of Indians v. United States*, 316 U. S. 317,

⁹⁹ Delaware Court, p. 593, note 36.

¹⁰⁰ The majority in the Fifth Circuit made no mention of this evidence or rule in its brief opinion. However, Circuit Judge Cameron in his dissent (at p. 135) differed on this point.

62 Sup. Ct. 1095, 86 L. Ed. 1501 (1942), in which this Court said (pp. 329-330):

"This statement by the Committee which reported the General Allotment Act of 1887, made within five years of its passage, is virtually conclusive as to the significance of that Act . . ."

It must be recalled that this excursion into the legislative history of the Act, and particularly Section 9(b), is taken supposedly because the statutory language is either not definite or perhaps ambiguous with regard to the issue in point here. As an aid in the statutory interpretation or construction of this section, extrinsic matters are being considered. *Sioux Tribe* applies only to allow the subsequent legislative history, here Committee reports and debate on an amendment of the very statute whose construction is in issue (which amendment was adopted) to be considered in determining the intent of the Congress at the time the original Act was enacted. *Fogarty* held only that, if there is a way of ascertaining the intent of the Congress contemporaneous with the enactment of the legislation in question, subsequent events need not be studied. Petitioner maintains that either (1) the statutory language of Section 9 is clear and unambiguous in that it contains no provision specifying the tax basis of a vessel whose price is adjusted and, therefore, such basis must be determined under the normal rules of the Code; or (2) the legislative history, including prior bills, Committee Reports, debates on the floor of the Congress, bills considered and not enacted, and proposed amendments to bills relative to Section 9, clearly indicates no intent that the statutory sales price be the tax basis, or, if Petitioner not be correct in these, (3) that the legislative history prior to the enactment of the Act indicates no contemporaneous intent of Congress as to the

tax basis of a vessel whose price was adjusted under Section 9, and, therefore, resort may be had to subsequent legislative history, which does not supplant, but rather supplies, the contemporaneous intent of the 79th Congress which enacted the Act. Therefore, *Fogarty* does not apply and *Sioux Tribe* does.¹⁰¹

- (d) Subsequent legislative history clearly demonstrates the error of the lower courts and of the Government with regard to Congressional intent that the statutory sales price be the tax basis of a vessel whose original purchase price is adjusted pursuant to Section 9.

In 1949, the Treasury Department, through the office of the Commissioner of Internal Revenue, issued Mimeograph 6366, dated February 18, 1949,¹⁰² in which that Department stated, in Paragraph 8 thereof, that:

"For Federal tax purposes, on and after March 8, 1946, the basis (unadjusted) under Section 113(a) of the Internal Revenue Code, of a vessel on which an adjustment under Section 9 of the Act has been made is the statutory sales price as determined by the Commission under the Act."

In the Congress in session when Mimeograph 6366 was issued, a bill, H. R. 3419, was introduced, to amend the Merchant Ship Sales Act of 1946 by adding the following paragraph at the end of Section 9(b):

"From and after March 8, 1946, the cost basis of a vessel in respect of which the price adjustment is

¹⁰¹ The Delaware Court appears to base its holding on this point on the fact that *Fogarty* came after *Sioux Tribe*. See note 36 at p. 593. However, *Sioux Tribe* was cited in the decision of *Federal Housing Authority v. The Darlington*, *supra*, p. 28, which was decided after *Fogarty*.

¹⁰² 1949-1 Cum. Bull. 270.

made shall be the undepreciated original purchase price reduced by the net amount of such adjustment in favor of the applicant resulting from the application of all the foregoing provisions of this subsection."

This bill was considered by the Committee on Merchant Marine and Fisheries of the House (the Committee with the same jurisdiction as the one which had considered H. R. 3603) and recommended for adoption.¹⁰³ The following excerpts appear in that Committee Report:

"The purpose of this bill is to clarify section 9 of the Merchant Ship Sales Act of 1946 with regard to the proper cost basis for depreciation purposes of war-built vessels sold by the United States Maritime Commission prior to the enactment of the act. (p. 1)

"Your committee has been informed through hearings held recently that in most, if not all cases, the operation of the *adjustment provisions* of section 9 *never actually results in a net cost to the purchaser as low as the statutory sales price* which he would have had to pay if he had purchased the vessel after the enactment of the act. Notwithstanding this fact, however, the Bureau of Internal Revenue holds that for determining the cost basis for purposes of depreciation the 'statutory sales price' shall be taken as a criterion, *not the actual net cost to the purchaser*. The effect of this, of course, is that the prior purchaser whose price was adjusted under section 9, is allowed lower depreciation charges than he would normally be able to claim on the basis of the *actual net amount paid for the vessel . . .*" (p. 2) (emphasis added)

Then, under the heading "Recommendation" (p. 2) the Committee Report states:

¹⁰³ See H. Rep. No. 1342, 81st Cong., 1st Sess., dated September 27, 1949, to accompany H. R. 3419.

"Since the provisions of section 9 appear to be ambiguous and as interpreted by the Bureau of Internal Revenue result in inequities to those citizens who purchased war-built vessels prior to the enactment of the Act (*a result which was not intended when the act was originally passed*), your committee believes this amendment should be enacted." (emphasis added).

H. R. 3419 was passed by the House on October 3, 1949 and in the Senate was referred to the Committee on Interstate and Foreign Commerce (the committee with jurisdiction similar to the one which had considered H. R. 3603 and S. 292), which Committee also reported the bill with a favorable recommendation.¹⁰⁴ The following excerpts are taken from that Committee Report:

"The purpose of this bill is to clarify a possible ambiguity in the Merchant Ship Sales Act of 1946 with regard to the proper cost basis of war-built vessels sold by the United States Maritime Commission prior to March 8, 1946, the date of enactment of that statute, and whose original purchase price has been adjusted under section 9 of the act." (p. 1)

"The Merchant Ship Sales Act of 1946 provided for the sale of war-built vessels owned by the United States and suitable for commercial use. In that act, a formula was prescribed for determining the 'statutory sales price' of various types of vessels to be sold thereunder. In fairness to those who had already purchased the same type vessels during the war years, frequently in response to the urging of the Maritime Commission, it was provided in section 9 of the act that these prior purchasers should be entitled to certain specified adjustments in the prices they originally agreed to pay for such vessels. Such

¹⁰⁴ See S. Rep. No. 1915, 81st Cong., 2d Sess., dated June 27 (Legislative Day, June 7), 1950, to accompany H. R. 3419.

action fulfilled the assurances given to many prior purchasers, usually incorporated in the original contracts of purchase, that they would be given the benefit of any price reductions contained in any subsequent ship sales legislation. . . ." (p. 1)

"Section 9 proposes to treat the vessel sold prior to March 8, 1946 as if they were being sold on that date and not before. A formula is provided for determining the adjustment. A series of debits and credits are set forth, the net effect of which is to arrive at an adjusted price for the vessel. . . . The final result is that the adjusted purchase price is the original purchase price less the net price adjustment. However, these adjustments almost never result in a net cost of the prior purchaser as low as the 'statutory sales price.' In most cases, if not all, this adjusted purchase price is considerably higher than subsequent purchasers are required to pay for identical type ships under the Ship Sales Act.

"This bill does not increase the amount of adjustments to be given to prior purchasers under the Merchant Ship Sales Act of 1946. It does not seek to change the price-adjustment formula. Its purpose is to clarify a possible ambiguity in the provision of this statute, and to insure to prior purchasers seeking adjustment under section 9 that the adjusted purchase price is the proper depreciable cost basis of the vessel as of March 8, 1946, which amount can be depreciated over the remaining life expectancy of the vessel.

—As indicated by the House Committee on Merchant Marine and Fisheries' Report on this bill (Rept. No. 1342), enactment of this legislation would be in accord with the intent of Congress in enacting section 9 of the Ship Sales Act. Furthermore, this conforms to established accounting practices in that the prior purchaser's depreciable cost

will be his actual cost, and not the lower statutory sales price, of which he has never received the benefit.

"As previously stated, the operation of the *formula in section 9* is such that the adjusted purchase price is higher, and often very much higher, than the statutory sales price at which similar vessels were sold to others, including foreigners, after the date of enactment of the Ship Sales Act. The Bureau of Internal Revenue has indicated that, under the present wording of the Ship Sales Act, persons who purchased vessels prior to the enactment of the Ship Sales Act and received an adjustment under section 9 of that statute should use the 'statutory sales price' as their cost basis rather than their *actual 'adjusted purchase price' under the formula* provided by section 9. Such an interpretation has the effect of largely nullifying the intent and purpose of the adjustment provisions of that act and of depriving these prior purchasers of the adjustment benefits Congress intended . . ." (p. 2) (emphasis added).

The proposed amendment was adopted in that form by the Senate. However, H. R. 3419 was vetoed by President Truman after Congress had adjourned. In his veto message to Congress¹⁰⁵ the President stated (p. 15792):

"In order to accord prior purchasers a parity of treatment with those buying vessels subsequent to passage of the act, section 9(b) prescribes certain procedures by which a prior purchaser voluntarily may obtain adjustments in his original price. . . . The net effect of these adjustments has usually been in favor of the government so that *the adjusted obligation of the prior purchaser has been somewhere between the price which he originally paid for the*

¹⁰⁵ 96 Cong. Rec. 15791-2, Part-11 (November 27, 1950).

vessel and the statutory sales price." (emphasis added).

In vetoing the bill, the President expressed concern that this method of handling would not be equitable and suggested another approach in lieu thereof. However, this does not detract from the fact that both Houses of the Congress and both Committees of these two Houses which had previously considered and recommended the Act expressed their opinion and belief (in both the Committee reports and in the adoption of the proposed amendment based on these reports) that it was not the original intent of Congress that the basis of a vessel whose original purchase price had been adjusted under Section 9 was to be the statutory sales price. This expression occurred within three and one-half years (in the House) and four and one-half years (in the Senate) after the adoption of the Act. The effect of this subsequent legislative history as evidence of Congressional intent is clearly within the holding of *Sioux Tribe, supra*.

6. If Congress had intended what the lower courts and the Government erroneously say it did, it would have said so specifically as it has in other similar cases.

As pointed out by Circuit Judge Cameron dissenting in the Fifth Circuit, when Congress has desired that the basis of vessels be determined in a manner different from Section 113(a) it has always said so specifically. He pointed to Sections 510 and 511 of the Merchant Marine Act, 1936.¹⁰⁶ In S. 292 and in the Senate amendment of H. R. 3603 the Senate specifically provided for the tax consequences of the adjustment, not just between the years of original purchase and the year of the Act as in the Act, but

¹⁰⁶ See note 1 at p. 134.

for all years subsequent to original purchase.¹⁰⁷ It is dangerous to draw inferences from failures to act or omissions by Congress but there certainly is no basis for inferring here that Congress intended a result which would have inevitably followed from Section 9(e)(1) of the Senate Amendment when it, in considering that bill with the House bill, adopted a bill without a similar provision. Unfortunately, the Conference Report makes no mention of Section 9(e)(1) and why it was omitted from the Conference bill.

This was quite properly recognized and accorded its proper interpretation by the Court of Claims in the *Socony* case.

"This legislative history shows that the committees of Congress gave minute attention to the tax consequences, current and future, of the readjustment authorized by section 9. The bill as enacted by the Senate had in it an express provision that the statutory sales price should be the basis for future depreciation. The conference omitted this provision, and the Act as passed omitted it. There is no room for an implication that Congress, having considered and omitted it, showed, by other parts of section 9, an intent to retain it." (at p. 913)¹⁰⁸

This is just another indication of the attempt by the Government to convert the effect of Section 9 of the Act into an act not only different from the one enacted but one that was considered, but rejected, by Congress.

¹⁰⁷ Section 9(e)(1) of Senate amendment of H. R. 3603. Appendix C, *infra*, C-9.

¹⁰⁸ To the same effect, see, the Alabama Court's opinion at pp. 292-30.

Conclusion.

In conclusion it is respectfully submitted that the Fifth Circuit erred (a) in overruling the Alabama Court and in holding that the tax basis, for purposes of depreciation, of the 18 vessels owned by Petitioner was not the actual economic cost of those vessels to Petitioner but rather was their artificially contrived or hypothetical statutory sales price; (b) in failing to apply the usual and normal Internal Revenue Code provisions and rules applicable in determining the tax basis of the 18 vessels of Petitioner; and (c) in its findings and conclusions, in the face of the clear mandate and language of Section 9, with regard to the Congressional intent as to Section 9(b), its application and particularly the effect thereof to the tax basis of the 18 vessels of the Petitioner. Petitioner also respectfully contends that the reasoning and conclusion of the Alabama Court and of the Court of Claims in the consolidated cases of *Socony*, were in all respects correct and proper in their interpretation of the application and effect of Section 9(b) of the Act and the resolution of the issue of the proper tax basis of such property.

For these reasons and on the basis of the arguments herein made, Petitioner respectfully requests that the decision of the Fifth Circuit be overruled and the judgment of the Alabama District Court be sustained and reinstated as to the issue for which the writ of certiorari was granted.

Respectfully submitted,

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Proof of Service.

I, John W. McConnell, Jr., the attorney of record for Petitioner herein and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 23rd day of February, 1965, I served a copy of the foregoing Brief of Petitioner with separate Appendices by personal service on each of the following attorneys of record for the United States of America in their offices in the Department of Justice, Washington, D. C.:

1. The Honorable Archibald Cox, Solicitor General
2. The Honorable John B. Jones, Acting Assistant Attorney General
3. The Honorable I. Henry Kutz and David I. Granger, Attorneys, Department of Justice.

JOHN W. McCONNELL, JR.

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JOHN F. DAVIS, CLERK

IN THE
Supreme Court of the United States
OCTOBER TERM, 1964.

No. 245.

WATERMAN STEAMSHIP CORPORATION,

Petitioner,

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE
FIFTH CIRCUIT.

APPENDICES TO BRIEF FOR PETITIONER.

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APPENDIX A.

Statutes Involved.

(1) INTERNAL REVENUE CODE OF 1939, 26 U. S. C.

SEC. 23. DEDUCTIONS FROM GROSS INCOME.

In computing net income there shall be allowed as deductions:

(1) *Depreciation*.—A reasonable allowance for the exhaustion, wear and tear (including a reasonable allowance for obsolescence)—

(1) of property used in the trade or business, • • •

(n) *Basis for Depreciation and Depletion*.—The basis upon which depletion, exhaustion, wear and tear, and obsolescence are to be allowed in respect of any property shall be as provided in section 114.

(26 U. S. C. 1952 ed., Sec. 23.)

SEC. 113. ADJUSTED BASIS FOR DETERMINING GAIN OR LOSS.

(a) *Basis (Unadjusted) of Property*.—The basis of property shall be the cost of such property; • • •

(b) *Adjusted Basis*.—The adjusted basis for determining the gain or loss from the sale or other disposition of property, whenever acquired, shall be the basis determined under subsection (a), adjusted as hereinafter provided.

(26 U. S. C. 1952 ed., Sec. 113.)

SEC. 114. BASIS FOR DEPRECIATION AND DEPLETION.

(a) *Basis for Depreciation.*—The basis upon which exhaustion, wear and tear, and obsolescence are to be allowed in respect of any property shall be the adjusted basis provided in section 113(b) for the purpose of determining the gain upon the sale or other disposition of such property.

(26 U. S. C. 1952 ed., Sec. 114.)

- (2) **MERCHANT SHIP SALES ACT OF 1946**, c. 82, 60 Stat. 41, 50 U. S. C. Appendix 1952 ed., Sec. 1734 *et seq.*

Sec. 3. As used in this Act the term—

(a) "Commission" means the United States Maritime Commission.

(b) "War-built vessel" means an oceangoing vessel of one thousand five hundred gross tons or more, owned by the United States and suitable for commercial use—

(1) which was constructed or contracted for by or for the account of the United States during the period, beginning January 1, 1941, and ending with September 2, 1945; or

(2) which having been constructed during the period beginning September 3, 1939, and ending with September 2, 1945, was acquired by the United States during such period.

(c) "Prewar domestic cost," as applied to any type of vessel, means the amount determined by the Commission; and published by the Commission in the Federal Register, to be the amount for which a standard vessel of such type could have been constructed (without its national defense features) in the United States under normal conditions relating to labor, materials, and other elements of cost, obtaining on or about January 1, 1941. In no case shall the prewar

domestic cost of any type of vessel be considered to be greater than 80 per centum of the domestic war cost of vessels of the same type.

(d) "Statutory sales price," as applied to a particular vessel, means, in the case of a drycargo vessel, an amount equal to 50 per centum of the prewar domestic cost of that type of vessel, and in the case of a tanker, such term means an amount equal to 87½ per centum of the prewar, domestic cost of a tanker of that type, such amount in each case being adjusted as follows:

(1) If the Commission is of the opinion that the vessel is not in class, there shall be subtracted the amount estimated by the Commission as the cost of putting the vessel in class.

(2) If the Commission is of the opinion that the vessel lacks desirable features which are incorporated in the standard vessel used for the purpose of determining prewar domestic cost, and that the statutory sales price (unadjusted) would be lower if the standard vessel had also lacked such features, there shall be subtracted the amount estimated by the Commission as the amount of such resulting difference in statutory sales price.

(3) If the Commission is of the opinion that the vessel contains desirable features which are not incorporated in the standard vessel used for the purpose of determining prewar domestic cost, and that the statutory sales price (unadjusted) would be higher if the standard vessel had also contained such features, there shall be added the amount estimated by the Commission as the amount of such resulting difference in statutory sales price.

(4) There shall be subtracted, as representing normal depreciation, an amount computed by applying to the statutory sales price (determined without

regard to this paragraph) the rate of 5 per centum per annum for the period beginning with the date of the original delivery of the vessel by its builder and ending with the date of sale or charter to the applicant in question, and there shall also be subtracted an amount computed by applying to the statutory sales price (determined without regard to this paragraph) such rate not in excess of 3 per centum per annum in the case of a vessel other than a tanker, and not in excess of 4 per centum per annum in the case of a tanker, for such period or periods of war service as the Commission determines will make reasonable allowance for excessive wear and tear by reason of war service which cannot be or has not been otherwise compensated for under this subsection.

No adjustment, except in respect of passenger vessels constructed before January 1, 1941, shall be made under this Act which will result in a statutory sales price which (1) in the case of dry-cargo vessels (except Liberty type vessels) will be less than 35 per centum of the domestic war cost of vessels of the same type, (2) in the case of any Liberty type vessel will be less than $31\frac{1}{2}$ per centum of the domestic war cost of vessels of such type, or (3) in the case of a tanker will be less than 50 per centum of the domestic war cost of tankers of the same type. For the purposes of this Act, except section 5, all Liberty vessels shall be considered to be vessels of one and the same type.

(e) "Domestic war cost" as applied to any type of vessel means the average construction cost (without national defense features) as determined by the Commission, of vessels of such type delivered during the calendar year 1944, except in case of any type of vessel the principal deliveries of which were made after the calendar year 1944, there shall be used in lieu of such

year 1944 such period of not less than six consecutive calendar months as the Commission shall find to be most representative of war production costs of such type.

(f) "Cessation of hostilities" means the date proclaimed by the President as the date of the cessation of hostilities in the present war, or the date so specified in a concurrent resolution of the two Houses of the Congress, whichever is the earlier.

(g) "Citizen of the United States" includes a corporation, partnership, or association only if it is a citizen of the United States within the meaning of section 2 of the Shipping Act of 1916, as amended. The term "affiliated interest" as used in sections 9 and 10 of this Act includes any person affiliated or associated with a citizen applicant for benefits under this Act who the Commission, pursuant to rules and regulations prescribed hereunder, determines should be so included in order to carry out the policy and purposes of this Act.

(50 U. S. C. Appendix 195 ed., Sec. 1736)

Sec. 9. (a) A citizen of the United States who on the date of the enactment of this Act—

(1) owns a vessel which he purchased from the Commission prior to such date, and which was delivered by its builder after December 31, 1940; or

(2) is party to a contract with the Commission to purchase from the Commission a vessel, which has not yet been delivered to him; or

(3) owns a vessel on account of which a construction-differential subsidy was paid, or agreed to be paid, by the Commission under section 504 of the Merchant Marine Act, 1936, as amended and which was delivered by its builder after December 31, 1940; or

(4) is party to a contract with a shipbuilder for the construction for him of a vessel, which has not yet been delivered to him, and on account of which a construction-differential subsidy was agreed, prior to such date, to be paid by the Commission under section 504 of the Merchant Marine Act, 1936, as amended:

shall, except as hereinafter provided, be entitled to an adjustment in the price of such vessel under this section if he makes application therefor, in such form and manner as the Commission may prescribe, within sixty days after the date of publication of the applicable prewar domestic costs in the Federal Register under section 3(c) of this Act. No adjustment shall be made under this section in respect of any vessel the contract for the construction of which was made after September 2, 1945, under the provisions of title V (including section 504) or title VII of the Merchant Marine Act, 1936, as amended.

(b) Such adjustment shall be made as hereinafter provided, by treating the vessel as if it were being sold to the applicant on the date of the enactment of this Act, and not before that time. The amount of such adjustment shall be determined as follows:

(1) The Commission shall credit the applicant with the excess of the cash payments made upon the original purchase price of the vessel over 25 per centum of the statutory sales price of the vessel, as of such date of enactment. If such payment was less than 25 per centum of the statutory sales price of the vessel, the applicant shall pay the difference to the Commission.

(2) The applicant's indebtedness under any mortgage to the United States, with respect to the vessel shall be adjusted.

(3) The adjusted mortgage indebtedness shall be in an amount equal to the excess of the statutory

sales price of the vessel as of the date of the enactment of this Act over the sum of the cash payment retained by the United States under paragraph (1) plus the readjusted trade-in allowance (determined under paragraph (7)) with respect to any vessel exchanged by the applicant on the original purchase. The adjusted mortgage indebtedness shall be payable in equal annual installments thereafter during the remaining life of such mortgage with interest on the portion of the statutory sales price remaining unpaid at the rate of $3\frac{1}{2}$ per centum per annum.

(4) The Commission shall credit the applicant with the excess, if any, of the sum of the cash payments made by the applicant upon the original purchase price of the vessel plus the readjusted trade-in allowance (determined under paragraph (7)) over the statutory sales price of the vessel as of the date of the enactment of this Act to the extent not credited under paragraph (1).

(5) The Commission shall also credit the applicant with an amount equal to interest at the rate of $3\frac{1}{2}$ per centum per annum (for the period beginning with the date of the original delivery of the vessel to the applicant and ending with the date of the enactment of this Act) on the excess of the original purchase price of the vessel over the amount of any allowance allowed by the Commission on the exchange of any vessel on such purchase; the amount of such credit first being reduced by any interest on the original mortgage indebtedness accrued up to such date of enactment and unpaid. Interest so accrued and unpaid shall be canceled.

(6) The applicant shall credit the Commission with all amounts paid by the United States to him as charter hire for use of the vessel (exclusive of service, if any, required under the terms of the charter) under any charter party made prior to the

date of the enactment of this Act, and any charter hire for use accrued up to such date of enactment and unpaid shall be canceled; and the Commission shall credit the applicant with the amount that would have been paid by the United States to the applicant as charter hire for bare-boat use of vessels exchanged by the applicant on the original purchase (for the period beginning with date on which the vessels so exchanged were delivered to the Commission and ending with the date of the enactment of this Act).

(7) The allowance made to the applicant on any vessel exchanged by him on the original purchase shall be readjusted so as to limit such allowance to the amount provided for under section 8.

(8) There shall be subtracted from the sum of the credits in favor of the Commission under the foregoing provisions of this subsection the amount of any overpayments of Federal taxes by the applicant resulting from the application of subsection (c)(1), and there shall be subtracted from the sum of the credits in favor of the applicant under the foregoing provisions of this subsection the amount of any deficiencies in Federal taxes of the applicant resulting from the application of subsection (c)(1). If, after making such subtractions, the sum of the credits in favor of the applicant exceeds the sum of the credits in favor of the Commission, such excess shall be paid by the Commission to the applicant. If, after making such subtractions, the sum of the credits in favor of the Commission exceeds the sum of the credits in favor of the applicant, such excess shall be paid by the applicant to the Commission. Upon such payment by the Commission or the applicant, such overpayments shall be treated as having been refunded and such deficiencies as having been paid.

For the purposes of this subsection, the purchase price of a vessel on account of which a construction-differential subsidy was paid or agreed to be paid under section 504 of the Merchant Marine Act, 1936, as amended, shall be the net cost of the vessel to the owner.

(c) An adjustment shall be made under this section only if the applicant enters into an agreement with the Commission binding upon the citizen applicant and any affiliated interest to the effect that—

(1) depreciation and amortization allowed or allowable with respect to the vessel up to the date of the enactment of this Act for Federal tax purposes shall be treated as not having been allowable; amounts credited to the Commission under subsection (b)(6) shall be treated for Federal tax purposes as not having been received or accrued as income; amounts credited to the applicant under subsection (b)(5) and (6) shall be treated for Federal tax purposes as having been received and accrued as income in the taxable year in which falls the date of the enactment of this Act;

(2) the liability of the United States for use (exclusive of service, if any, required under the terms of the charter) of the vessel on or after the date of the enactment of this Act under any charter party shall not exceed 15 per centum per annum of the statutory sales price of the vessel as of such date of enactment; and the liability of the United States under any such charter party for loss of the vessel shall be determined on the basis of the statutory sales price as of the date of the enactment of this Act, depreciated to the date of loss at the rate of 5 per centum per annum; and .

(3) in the event the United States, prior to the termination of the existing national emergency

declared by the President on May 27, 1941, uses such vessel pursuant to a taking, or pursuant to a bareboat charter made, on or after the date of the enactment of this Act, the compensation to be paid to the purchaser, his receivers, and trustees, shall in no event be greater than 15 per centum per annum of the statutory sales price as of such date.

(d) Section 506 of the Merchant Marine Act, 1936, as amended, shall not apply with respect to (1) any vessel which is eligible for an adjustment under this section, or (2) any vessel described in clause (1), (2), (3), or (4) of subsection (a) of this section, the contract for the construction of which is made after September 2, 1945, and prior to the date of enactment of this Act.

(50 U. S. C. Appendix 1952 ed., Sec. 1742)

(3) RULES AND REGULATIONS OF THE MERCHANT SHIP SALES ACT OF 1946 (GENERAL ORDER 60)

TITLE 46—SHIPPING

CHAPTER II—UNITED STATES MARITIME COMMISSION

SUBCHAPTER F—MERCHANT SHIP SALES ACT OF 1946

**PART 299—RULES AND REGULATIONS, FORMS, AND
CITIZENSHIP REQUIREMENTS**

The Merchant Ship Sales Act of 1946 having been enacted on March 8, 1946, and the prewar domestic cost of vessels covered thereby being published in the Federal Register pursuant to such Act, in section 299.56 below, the Maritime Commission hereby invites applications under the provisions of the act and the following regulations. Subject to such provisions, the Maritime Commission will accept applications for the purchase or charter of vessels now under the jurisdiction and control of the Maritime Commission. (No charter agreement will be entered into prior to 60 days from the date of publication of the applicable prewar

domestic cost in the Federal Register, and no contract of sale to a non-citizen of a tanker or C-type vessel will be entered into within 90 days from publication date, except as provided in the act). Additional vessels will be available at such time as they may be transferred to the jurisdiction and control of the Maritime Commission. The prewar domestic cost of certain special types of vessels are not included in this publication, but will be published at a later date, after which applications for ships of such types will be entertained.

ORGANIZATION OF GENERAL ORDER 60

There are printed herein the regulations of the United States Maritime Commission for administration of the Merchant Ship Sales Act of 1946, and copies of certain necessary applications and forms.

The regulations and forms are organized and written so that a person interested in one particular phase of the act can acquire all necessary information from the pertinent subpart of the regulations and the applicable form.

General provisions and definitions at the beginning of the regulations should be consulted by all interested persons.

SUBPART A—GENERAL PROVISIONS

Sec.

299.1 Definitions:

- (a) Commission.
- (b) War-built vessel.
- (c) Dry-cargo vessel.
- (d) Prewar domestic cost.
- (e) Domestic war cost.
- (f) Statutory sales price.
- (g) Cessation of hostilities.
- (h) Citizen of the United States.
- (i) Affiliated interest.

- (j) Constructed or date constructed.
- (k) Act.
- (l) Regulations.
- (m) Secretary.
- (n) Working capital.
- (o) Net worth.
- (p) Preoperating and operating expenses.
- (q) Related company.

SUBPART E—ADJUSTMENT FOR PRIOR SALES TO CITIZENS.

299.51 Adjustment for prior sales to citizens.

- (a) Application.
- (b) Amendment of application.
- (c) Persons entitled to adjustment.
- (d) Amount of adjustment.
- (e) Condition of adjustment.
- (f) Method of adjustment.

SUBPART G—FORMS

- 299.71 Application to purchase war-built vessel.
- 299.76 Application for determination of allowance of credit for exchange of old vessel.
- 299.78 Offer of applicant to exchange vessel for allowance of credit on a vessel.
- 299.81 Application to charter a war-built vessel for bareboat use.
- 299.82 Uniform bareboat charter of a war-built dry-cargo vessel under the Merchant Ship Sales Act of 1946, "SHIP-SALESEMISE 303".
- 299.83 Application for transfer of a war-built vessel in settlement of a claim against the United States.
- 299.85 Application for transfer of another vessel for a vessel constructed in the United States since January 1, 1937, and which was taken for use by the United States.
- 299.87 Application for adjustment of purchase price of vessel purchased prior to March 8, 1946.
- 299.91 Application for the reconversion, or alteration or modification of a vessel.

AUTHORITY: Sections 299.1 to 299.91, inclusive, issued under Section 12 (d) of the Merchant Ship Sales Act of 1946 (60 Stat. 41).

SUBPART E—ADJUSTMENT FOR PRIOR SALES TO CITIZENS

299.51 *Adjustment for prior sales to citizens.* (a) *Application.* Within sixty days after the date of publication of the applicable prewar domestic costs in the Federal Register, any citizen of the United States, as defined in section 299.1 (h) of these regulations, who is entitled to an adjustment in the price of a vessel as provided for in paragraph (c) below, may apply to the Commission for such adjustment. The application to receive consideration must be substantially in the form prescribed by the Commission in section 299.87 of these regulations and shall be accompanied by applicant's own computation. Three executed copies and fifteen conformed copies of the application must be filed with the Secretary, United States Maritime Commission, Washington 25, D. C. Items or parts of items in the application which are inapplicable may be omitted. If any information called for by an applicable item is not furnished, an explanation of the omission shall be given. Detailed descriptions of exhibits need not be given. The applicant may furnish such relevant information as it may desire, in addition to that specified in the form.

(b) *Amendment of application.* Such application may be amended at any time before the Commission has acted upon it. Three executed copies and fifteen conformed copies of the amendment must be filed with the Secretary, United States Maritime Commission, Washington 25, D. C. Any information called for by the Commission from time to time shall be furnished as an amendment or amendments to the application. The applicant shall file from time to time as amendments any information necessary to keep current and correct, while the application is pending, the information contained therein or furnished in connection therewith.

(c) *Persons entitled to adjustment.* Any citizen of the United States, as defined in section 299.1 (h) of these regulations, who on March 8, 1946

(1) owned a vessel which he purchased from the Commission prior to such date and which was delivered by its builder after December 31, 1940; or

(2) was a party to a contract with the Commission to purchase from the Commission a vessel, which had not yet been delivered to him; or

(3) owned a vessel on account of which a construction differential subsidy was paid, or agreed to be paid, by the Commission under section 504 of the Merchant Marine Act, 1936, as amended, and which was delivered by its builder after December 31, 1940; or

(4) was a party to a contract with a shipbuilder for the construction for him of a vessel, which had not yet been delivered to him, and on account of which a construction-differential subsidy was agreed, prior to such date, to be paid by the Commission under section 504 of the Merchant Marine Act, 1936, as amended,

shall, except as hereinafter provided, be entitled to an adjustment in the price of such vessel as provided in paragraph (a) above. No adjustment will be made in respect to any vessel the contract for the construction of which was made after September 2, 1945; under the provisions of Title V (including section 504) or Title VII of the Merchant Marine Act, 1936, as amended.

(d) *Amount of adjustment.* An adjustment will be made, as hereinafter provided, by treating the vessel as if it were being sold to the applicant on March 8, 1946, and not before that time. The amount of such adjustment will be determined as follows:

(1) The Commission will credit the applicant, for the purposes of subparagraph (8) of this paragraph (d), with the excess of all cash payments made upon the original purchase price of the vessel over 25 per centum of the statutory sales price of the vessel as of March 8, 1946. If such payment was less than 25

percentum of the statutory sales price of the vessel, the applicant will pay the difference to the Commission.

(2) The applicant's indebtedness under any mortgage to the United States with respect to the vessel will be adjusted.

(3) The adjusted mortgage indebtedness will be in an amount equal to the excess of the statutory sales price of the vessel as of March 8, 1946, over the sum of the cash payment retained by the United States under subparagraph (1) plus the readjusted trade-in allowance (determined under subparagraph (7)) with respect to any vessel exchanged by the applicant on the original purchase. The adjusted mortgage indebtedness will be payable in equal annual installments thereafter during the remaining life of such mortgage with interest on the portion of the statutory sales price remaining unpaid at the rate of three and one-half ($3\frac{1}{2}\%$) percentum per annum.

(4) The Commission will credit the applicant, for the purposes of subparagraph (8), with the excess, if any, of the sum of the cash payments made by the applicant upon the original purchase price of the vessel plus the readjusted trade-in allowance (determined under subparagraph (7)) over the statutory sales price of the vessel as of March 8, 1946, to the extent not credited under subparagraph (1).

(5) The Commission will also credit the applicant, for the purposes of subparagraph (8), with an amount equal to interest at the rate of three and one-half ($3\frac{1}{2}\%$) percentum per annum (for the period beginning with the date of the original delivery of the vessel to the applicant and ending with March 8, 1946), on the excess of the original purchase price of the vessel over the amount of any allowance originally allowed by the Commission to the applicant on the exchange of any vessel on such purchase; the amount of such credit first being reduced by any interest on the original mortgage

indebtedness accrued up to such date of enactment and unpaid. Interest so accrued and unpaid will be cancelled.

(6) The applicant will credit the Commission, for the purposes of subparagraph (8), with all amounts paid by the United States to him as charter hire for the bareboat use of the vessel, whether the vessel was under time or bareboat charter, under any charter party made prior to March 8, 1946, and any charter hire for such use accrued up to such date and unpaid shall be canceled; and the Commission will credit the applicant, for the purposes of subparagraph (8) with the amount that would have been paid by the United States to the applicant as charter hire for bareboat use of vessels exchanged by the applicant on the original purchase (for the period beginning with date on which the vessels so exchanged were delivered to the Commission and ending with March 8, 1946.).

(7) The allowance made to the applicant on any vessel exchanged by him on the original purchase will be readjusted so as to limit such allowance to the amount provided for under Section 299.22 of these regulations.

(8) There will be subtracted from the sum of the credits in favor of the Commission under the foregoing provisions of this subparagraph the amount of any overpayments of Federal taxes by the applicant resulting from the application of paragraph (e) (1), and there will be subtracted from the sum of the credits in favor of the applicant under the foregoing provisions of this subparagraph the amount of any deficiencies in Federal taxes of the applicant resulting from the application of said paragraph (e) (1). If, after making such subtractions, the sum of the credits in favor of the applicant exceeds the sum of the credits in favor of the Commission, such excess will be paid by the Commission to the applicant. If, after making such subtractions, the sum of the credits in favor of the Commission

exceeds the sum of the credits in favor of the applicant, such excess will be paid by the applicant to the Commission. Upon such payment by the Commission or the applicant, such overpayments will be treated as having been refunded and such deficiencies as having been paid.

For the purpose of this paragraph (d), the purchase price of a vessel on account of which a construction-differential subsidy was paid or agreed to be paid under section 504 of the Merchant Marine Act, 1936, as amended, will be the net cost of the vessel to the owner.

(e) *Condition of adjustment.* An adjustment will be made under this section only if the applicant enters into an agreement with the Commission binding upon the citizen-applicant and any affiliated interest to the effect that

(1) depreciation and amortization allowed or allowable with respect to the vessel up to March 8, 1946, for Federal tax purposes shall be treated as not having been allowable; amounts credited to the Commission under paragraph (d) (6) of this section shall be treated for Federal tax purposes as not having been received or accrued as income; amounts credited to the applicant under paragraph (d) (5) and (6) of this section shall be treated for Federal tax purposes as having been received and accrued as income in the taxable year in which falls March 8, 1946;

(2) the liability of the United States for use (exclusive of service, if any, required under the terms of the charter) of the vessel on or after March 8, 1946, under any charter party shall not exceed 15 per centum per annum of the statutory sales price of the vessel as of March 8, 1946; and the liability of the United States under any such charter party for loss of the vessel shall be determined on the basis of the statutory sales price as of March 8, 1946, depreciated to the date of loss at the rate of 5 per centum per annum; and

(3) in the event the United States, prior to the termination of the existing national emergency declared by the President on May 27, 1941, uses such vessel pursuant to a taking, or pursuant to a bareboat charter made, on or after March 8, 1946, the compensation to be paid to the purchaser, his receivers, and trustees, shall in no event be greater than 15 per centum per annum of the statutory sales price as of March 8, 1946.

(f) *Method of Adjustment.* If the Commission finds that applicant is entitled to an adjustment, applicant will be notified of the adjusted purchase price determined by the Commission. Unless the applicant notifies the Commission to the contrary within 15 days following the date of receipt by the applicant of the Commission's determination of adjusted purchase price, this adjusted purchase price will be binding upon the applicant and it agrees to execute an addendum to its original contract to purchase, which addendum will be sent to him by the Commission.

SUBPART G—FORMS

299.87 Application for adjustment of purchase price of vessel purchased prior to March 8, 1946. The form of application for such adjustment shall be substantially as follows:

APPLICATION FOR ADJUSTMENT OF PURCHASE PRICE
Filed by

a citizen of the United States

The undersigned hereby applies for an adjustment in the purchase price of the _____

(insert name of vessel)

(herein called the "vessel") in accordance with the provisions of the Merchant Ship Sales Act of 1946, Public Law 321, 79th Cong., 2d sess., approved March 8, 1946 (herein

called the "Act"), and the rules and regulations prescribed by the United States Maritime Commission (herein called the "Commission"), Section 299.1 to 299.91, inclusive, of General Order 60, published in the Federal Register April 23, 1946 (herein called the "regulations"), which the applicant agrees shall be binding upon all transactions in connection with this application. Applicant also agrees that any amendment or modification of the rules and regulations shall be binding upon all transactions approved by the Commission after the date of publication of such amendment or modification in the Federal Register.

The applicant further agrees that upon request of the Commission it will promptly furnish for the taxable years, specified by the Commission copies of Federal income and excess profit taxes returns, any audits thereof made by the Bureau of Internal Revenue, copies of any refund or other claims filed in connection with such returns and other pertinent data necessary in order for the Commission to make the tax adjustments required by the Act, and consents to the Commission being given full access to any other records, audits, claims or other data on file with the Bureau of Internal Revenue.

In order to induce the Commission to act favorably on this application, the applicant submits in support thereof the following information.

A. As to the Applicant:

1. Exact name.
2. Form or type of organization.
3. State or other sovereign power under the laws of which organized.
4. Address of principal executive offices.
5. Applicant represents that it is a citizen of the United States and attaches to the three executed copies of this application, affidavits to that effect in the form prescribed by the Commission.

B. As to the vessel:

6. Name of vessel.
7. Name and address of builder.
8. Commission hull no.
9. Builder's hull no.
10. Date of original delivery of the vessel. If not delivered, state estimated date of delivery.
11. Date of contract of sale under which the vessel was purchased or agreed to be purchased.
12. Date of contract of the Commission to pay construction-differential subsidy
No. of such subsidy contract
13. Cost of construction of vessel.
14. Price paid by applicant or agreed to be paid (net cost to the applicant).
15. Amounts and dates of cash payments by applicant in 14 above.
16. Amounts and due dates of remaining payments under any mortgage, with the United States and total amount of original mortgage indebtedness.

C. As to any charter prior to March 8, 1946 of the vessel to the United States:

17. No. of charter agreement.
18. Type (time or bareboat).
19. Amount (exclusive of service) of charter hire paid to the applicant by the United States.
20. Amount (exclusive of service) of charter hire accrued and unpaid to March 8, 1946.

D. As to any vessel traded-in on the purchase of vessel:

21. Answer questions 3 and 4 of Section 299.76.

22. Amount of original allowance by Commission on vessel traded-in.

23. No. of any charter agreement of such vessel with the United States.

E. As to Federal taxes paid by the applicant:

24. The amount allowed or allowable to applicant for depreciation or amortization allowed or allowable with respect to the vessel up to March 8, 1946 for Federal tax purposes.

25. Amounts paid as Federal taxes by the applicant on any charter hire (exclusive of service) paid or payable by the United States to the applicant for use of the vessel.

F. Method of adjustment:

26. Applicant understands that if the Commission finds that applicant is entitled to an adjustment, applicant will be notified of the adjusted purchase price determined by the Commission. Applicant agrees that unless it notifies the Commission to the contrary within 15 days following the date of receipt by the applicant of the Commission's determination of adjusted purchase price, this adjusted purchase price will be binding upon the applicant and it agrees to execute an addendum to its original contract to purchase, which addendum will be sent to him by the Commission.

G. Liability for use of vessel after March 8, 1946:

27. Applicant agrees, in the addendum to its original contract of sale as provided in item 26 above, that it will make an agreement with the Commission binding upon itself and any and all affiliated interests that the liability of the United States for use (exclusive of service, if any, required under the terms of the charter) of the Vessel on and after March 8, 1946 under any charter party shall not exceed 15 per centum per annum

of the statutory sales price of the vessel as of such date, and that the liability of the United States under any such charter party for the loss of the Vessel shall be determined on the basis of the statutory sales price as of such date, depreciated to the date of loss at the rate of 5 per centum per annum and that in the event the United States, prior to the termination of the existing national emergency declared by the President on May 27, 1941, uses such vessel pursuant to a taking, or pursuant to a bareboat charter made, on or after March 8, 1946, the compensation to be paid to the purchaser, his receivers, and trustees, shall in no event be greater than 15 per centum per annum of the statutory sales price as of such date.

H. As to exhibits filed:

28. A list of exhibits, properly identified, which shall include at the time of original filing, the following:

Exhibit I—Applicant's own computation of the re-adjustment of the purchase price of his vessel in accordance with Section 299.51 of the regulations. This shall be prepared by computing the adjusted mortgage indebtedness and identifying and totaling all credits and debits to the Commission and the applicant separately.

(CORPORATE SEAL)

Attest:

(Secretary)

(Date)

(Name of applicant)

By _____

(President)

APPENDIX B.

Prior Bills to Act.

(1)

[H. R. 4486, 78th Cong., 2d sess.]

A BILL To provide for the sale of certain Government-owned merchant vessels, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That for the purpose of further carrying out the policies declared in section 101 and the objectives set forth in section 210 of the Merchant Marine Act, 1936, as amended, and facilitating the adjustment of the merchant marine from war service to peacetime operations, the United States Maritime Commission, notwithstanding any other provisions of law, is authorized to sell and charter any vessel (1) constructed by the Maritime Commission or constructed under contracts executed on behalf of the Maritime Commission during the period commencing January 1, 1941, and ending on such date as the Maritime Commission shall fix, but in no event later than one year after termination of the present war, and (2) any vessel transferred to or otherwise acquired by the Maritime Commission constructed within the continental limits of the United States during such period, under the following terms and conditions:

(a) The Maritime Commission shall determine the cost to the United States of any such vessel based on the average construction cost of vessels of a comparable type construction during the period aforesaid.

(b) From such actual cost as determined in paragraph (a) of this section of any vessel sold, there shall be deducted the following in determining the purchase price of such vessel:

(1) The amount determined by the Maritime Commission as representing the actual cost to the United States of installing national defense or war service features in the vessel;

(2) The amount representing the depreciation of the vessel based upon a twenty-year life, including such additional amount determined by the Maritime Commission, after survey, as representing accelerated depreciation by reason of war service, but in no event shall the accelerated depreciation exceed the rate of $2\frac{1}{2}$ per centum per annum; and

(3) Thirty-five per centum of the remainder calculated as above, which amount represents the excess percentage-cost of constructing the vessel in the United States at the time of its construction over such cost had the vessel been constructed under normal peacetime conditions.

(c) Any such vessel may, in the discretion of the Commission, be sold to a citizen of the United States for operation in the foreign or domestic trade (excepting vessels engaged solely in the transportation of property on inland rivers and canals exclusively), at a price not less than the amount determined under paragraph (a) minus the amount of deductions determined under paragraph (b) hereof, or may be chartered bareboat for a fair rate, but not less than $8\frac{1}{2}$ per centum per annum of said sales price. Payment of the sales price shall be made and secured as provided in section 509 of the Merchant Marine Act, 1936, as amended, and every bareboat charter shall include the provisions contained in section 712 of the Merchant Marine Act, 1936, as amended.

(d) In case of an application for purchase of any such vessel by an applicant for a construction-differential subsidy therefor under the provisions of the Merchant Marine Act, 1936, as amended, the construction-differential subsidy may, in the discretion of the Commission, be equal to, but shall not exceed, 50 per centum of the sales price of the

vessel as determined by the Commission under the provisions of this Act during the period ending three years after the termination of the present war or such earlier date as the Commission shall find that reasonably adequate data are available with respect to contemporaneous foreign construction cost.

(e) In case of any vessel which was sold or agreed to be sold for delivery subsequent to December 31, 1941, and before the date of enactment of this Act, the sales price of such vessel and any construction-differential subsidy granted in connection therewith may be adjusted and settled in conformity with the applicable provisions of paragraphs (a), (b), and (c) hereof, but in cases of vessels sold in connection with a trade-in allowance granted under section 510 of the Merchant Marine Act, 1936, as amended, adjustment under the provisions of paragraphs (a) and (b) hereof shall be made only in proportion to the excess of the new tonnage sold over the old tonnage traded in on the purchase.

(f) In case of the sale of a vessel to a purchaser for operation in the coastwise, intercoastal, or other domestic trade of the United States, the terms of sale may, under such terms and conditions as the Maritime Commission shall prescribe, provide for payment of the sales price on terms not more favorable to the purchaser than the following: (1) a down payment in cash of $12\frac{1}{2}$ per centum; (2) deferred payments, at the rate of one-twentieth per annum, of not less than $37\frac{1}{2}$ per centum of such sales price, with interest on unpaid balance at $3\frac{1}{2}$ per centum per annum, secured by a first preferred mortgage on the vessel and otherwise as the Commission may determine; and (3) the payment of not more than 50 per centum of the sales price in earnings debentures, bearing interest at $3\frac{1}{2}$ per centum per annum, and further secured by a preferred mortgage on the vessel and otherwise as the Maritime Commission may determine.

(g) In case of sale to a purchaser not a citizen of the United States (herein used as defined in the Merchant

Marine Act, 1936, as amended) for payment of the sales price in cash.

(h) There shall be included in every contract for the sale of a vessel under this Act provisions that in the event the United States shall, through purchase or requisition, reacquire ownership of the vessel, payment or other compensation from the United States for such vessel shall be computed in accordance with the requirements of section 802 of the Merchant Marine Act, 1936, as amended, on the basis of the price at which the vessel was sold, whether or not a construction-differential subsidy shall have been paid or granted in respect of such vessel under the Merchant Marine Act, 1936, as amended, and that in the event of taking of the use of such vessel, charter hire or other compensation for the bareboat use thereof shall be based on the reasonable value of such use but at a rate not more than $8\frac{1}{2}$ per centum per annum of the price at which the vessel was sold hereunder.

SEC. 2. The Maritime Commission is authorized to reconvert or restore for commercial operation, including removal of national defense or war service features, any vessel authorized to be sold or chartered under the terms and conditions of section 1 thereof. The cost and expense thereof shall be considered as war costs and may be paid from the construction fund of the Maritime Commission, or, in lieu thereof, may be allowed on the purchase price of the vessel by way of deduction, credit, or otherwise.

SEC. 3. All moneys received by the Maritime Commission under this Act shall be deposited in the construction fund of the Maritime Commission, and all disbursements made by the Maritime Commission in carrying out this Act shall be paid from such fund. The provisions of sections 201 (d), 204 (b), 207, 209 (a), and 905 (c) of the Merchant Marine Act, 1936, as amended, shall apply to all activities and functions which the Commission is authorized to perform under this Act.

(2)

[H. R. 5213, 78th Cong., 2d sess.]

A BILL To provide for the sale of certain Government-owned merchant vessels, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That for the purpose of further carrying out the policies declared in section 101 and the objectives set forth in section 210 of the Merchant Marine Act, 1936, as amended, and facilitating the adjustment of the merchant marine from war service to peacetime operations, the United States Maritime Commission, whenever in its discretion it will aid in carrying out such policies and objectives, notwithstanding any other provision of law, is authorized to sell or charter any vessel, other than a vessel of which any other department or agency of the United States Government has the right to control, custody, or possession, until such vessel is determined by such department or agency to be surplus to its needs or is returned or transferred to the Commission, which has been (1) constructed by the Maritime Commission or constructed under contracts executed on behalf of the Maritime Commission during the period commencing January 1, 1941, and ending on such date as the Maritime Commission shall fix, but in no event later than one year after termination of the present war, or (2) transferred to or otherwise acquired by the Maritime Commission that was constructed within the continental limits of the United States during such period, under the following terms and conditions:

(a) The Maritime Commission shall estimate, and from time to time shall publish in the Federal Register, base costs applicable to each type of such vessels in the following manner:

(1) For vessels constructed under Maritime Commission contracts for which pre-war construction cost data are available from construction before January 1, 1942, the base cost for each type shall be determined by

the Commission on the basis of the average construction costs of vessels constructed in the period beginning January 1, 1937, and ending December 31, 1941, but exclusive of special features and modifications from standard design;

(2) For vessels of any types other than the Liberty type for which pre-war construction cost data under Maritime Commission contracts are not available by reason of no such vessels having been so constructed before January 1, 1942, the base costs shall be determined by the Commission on the basis of its estimate of the cost of each such type as if constructed under the average conditions as related to labor, material, and other costs obtained in the period beginning January 1, 1937, and ending December 31, 1941;

(3) For vessels of the Liberty type the base cost shall be at the rate of \$100 per dead-weight ton.

(b) In fixing the price or value of any such vessels for sale or charter purposes under this Act, the Maritime Commission shall adjust the base type cost as determined under paragraph (a) of this section by increase or decrease on account of modifications or special features as if constructed under average conditions in the period beginning January 1, 1937, and ending December 31, 1941. From such adjusted cost there shall be deducted the following in fixing the minimum sale price or valuation for purposes of charter:

(1) The amount determined by the Maritime Commission as representing the actual cost to the United States of national defense or war service features in the vessels to the extent that such cost has been included in the cost determined under paragraphs (a) and (b), plus the cost determined by the Commission as necessary to place the vessel in condition for normal operation in commercial services unless paid for or allowed by the Commission under section 2 hereof;

(2) The amount representing the depreciation of the vessel based upon a twenty-year life, including such additional amount determined by the Maritime Commission, after survey, as representing accelerated depreciation by reason of war service, but in no event shall the additional accelerated depreciation exceed the rate of $2\frac{1}{2}$ per centum per annum.

(c) Any such vessel may, in the discretion of the Commission, be sold to a citizen of the United States for operation in the foreign or domestic trade (excepting vessels engaged solely in the transportation of property on inland rivers and canals exclusively), at a price not less than the amount determined under paragraph (a) minus the amount of deductions determined under paragraph (b) hereof, or may be chartered bareboat to a citizen of the United States for such operation for a fair rate, but not less than $12\frac{1}{2}$ per centum per annum of said sales price, except under special circumstances upon the affirmative vote of four members of the Commission. Payment of the sales price shall be made and secured as provided in section 509 of the Merchant Marine Act, 1936, as amended, with respect to vessels of 14 knots speed or over notwithstanding that the vessel may be of lesser speed, and every bareboat charter shall include the provisions contained in sections 709, 710, 712, and 713 of the Merchant Marine Act, 1936, as amended.

(d) In case of an application for purchase of any such vessel with the aid of a construction-differential subsidy under title V of the Merchant Marine Act, 1936, as amended, or for the charter thereof with option to purchase under section 714 of said Act (except a Liberty type of vessel for which no construction-differential subsidy shall be allowed and which shall not be chartered under section 714), the construction-differential subsidy may, for the purposes of such sale or charter and option to purchase, in the discretion of the Commission, be equal to, but shall not exceed, 50 per centum of the sales price of the vessel as determined by the Commission under the provisions of

this Act during the period ending three years after the termination of the present war or such earlier date as the Commission shall find that reasonably adequate data are available with respect to contemporaneous foreign construction cost: *Provided, however,* That the sales price of any vessel under the provisions of this paragraph (d) shall not be less than the cost of constructing the vessel in a foreign shipbuilding center as determined by the Commission pursuant to the provisions of the joint resolution approved June 11, 1940, as extended (54 Stat. 306; 55 Stat. 148; 56 Stat. 370).

(c) In case of any vessel which was sold or agreed to be sold for delivery subsequent to December 31, 1941, and before the date of enactment of this Act, the sales price of such vessel and any construction-differential subsidy granted in connection therewith may be adjusted and settled in conformity with the applicable provisions of paragraphs (a), (b), and (c) hereof, but in making any such adjustment and settlement, the Commission shall take into consideration the amount of credit allowed by the Commission on any obsolete vessel traded in as part of the purchase price of the new vessel under the provisions of section 510 of the Merchant Marine Act, 1936, as amended, in excess, if any, of the market value of such obsolete vessel, as determined by the Commission, for operation in the world trade or in the foreign or domestic trade of the United States between January 1, 1939, and September 1, 1939, and any special amortization taken by the purchaser of the new vessel under the provisions of section 124 of the Internal Revenue Code.

(f) In case of the sale of a vessel (other than a Liberty type vessel) to a purchaser for operation in the coastwise, intercoastal, or other domestic trade of the United States, the terms of sale may, under such terms and conditions as the Maritime Commission shall prescribe, provide for payment of the sales price on terms not more favorable to the purchaser than the following: (1) a down payment in cash of 12½ per centum; (2) deferred payments, at the rate of

one-twentieth per annum, of not less than $37\frac{1}{2}$ per centum of such sales price, with interest on unpaid balance at $3\frac{1}{2}$ per centum per annum, secured by a first preferred mortgage on the vessel and otherwise as the Commission may determine; and (3) the payment of not more than 50 per centum of the sales price in earnings debentures maturing not later than twenty years after the date thereof, bearing interest at $3\frac{1}{2}$ per centum per annum, and further secured by a preferred mortgage on the vessel and otherwise as the Maritime Commission may determine. Such debentures and any mortgage securing such debentures shall provide for the establishment of a special sinking fund to be administered in accordance with rules and regulations to be prescribed by the Commission, and shall be subject to such provision as the Commission may deem to be necessary for the protection of the Government, including provision for insurance and restrictive of the transfer of title to the vessel. Into this special sinking fund the purchaser shall deposit annually or at such lesser intervals as the Commission may require one-half of the total voyage profits derived from the vessel's operation as determined by the Commission in accordance with rules and regulations prescribed by it, after deducting from such voyage profits the following: (A) An allowance for overhead expense as agreed upon between the purchaser and the Commission which allowance shall be appropriate to the character of service in which the vessel operates and shall be subject to re-determination by the Commission not more frequently than annually and shall be not more than 12 per centum nor less than 8 per centum of the gross revenue derived from the vessel's operation; (B) the interest paid by the purchaser on the first preferred mortgage notes issued under (2) above; and (C) an amount equal to 10 per centum of the sum of the down payment and the deferred payments authorized under (1) and (2) above. If with respect to any annual period the deductions authorized under (A), (B), and (C) hereof exceed the voyage profit for such period, an amount equal to such excess may with the approval of the Commission be withdrawn from the special sinking fund and paid into the general funds of the purchaser. There shall also be paid

into the special sinking fund the proceeds of any sale of the vessel and the proceeds of all insurance and indemnities received by the purchaser on account of total loss of the vessel less such portion thereof as may be payable to the mortgagee under the first preferred mortgage on the vessel and less the amount of tax upon the capital gain, if any, resulting from such proceeds and indemnities. The Commission shall at all times have a prior lien upon moneys in the special sinking fund and obligated to be deposited therein for the satisfaction of the first preferred mortgage and debenture notes but may in its discretion limit the liability of the purchaser under the debentures to the collateral thereunder. At the end of each ten-year period, or at such shorter intervals as may be agreed upon between the purchaser and the Commission, or in the event of the sale or the total loss of the vessel, the amount then remaining in the special sinking fund (including amounts obligated for deposit therein) or so much thereof as does not exceed the unpaid principal of the debentures and accrued interest thereon shall be paid to the Commission and applied to such debentures, and the balance, if any, may, with the permission of the Commission, or upon maturity shall, be paid into the general funds of the purchaser. With respect to any vessel purchased under the terms of this paragraph (f), the sum of the down payment and the deferred payments authorized under (1) and (2) hereof shall constitute the basis for determining gain or loss and for depreciation for the purposes of Federal income and excess-profits taxes, and moneys, withdrawn from the special sinking fund and paid into the general funds of the purchaser shall be taxable as if earned during the year of such withdrawal, but earnings deposited in the special sinking fund shall otherwise be exempt from all Federal taxes.

(g) In the case of the sale of a Liberty type vessel to a purchaser for operation in the coastwise, intercoastal, or other domestic trade of the United States, if the sales price thereof be determined in accordance with paragraphs (a)

and (b) hereof, payment of the sales price shall be made and secured as provided in section 509 of the Merchant Marine Act, 1936, as amended: *Provided, however,* That the purchaser thereof may, at his option, enter into contract with the Commission to make payment in the manner and subject to the conditions of paragraph (f) hereof in which case the purchase price, for the purposes of paragraph (f) shall be fixed by the Commission on the basis of a base cost per dead-weight ton equal to one and one-half times the base cost authorized by paragraph (a) (3) hereof.

(h) In case of sale to a purchaser not a citizen of the United States (herein used as defined in the Merchant Marine Act, 1936, as amended) for payment of the sales price in cash.

(i) There shall be included in every contract for the sale of a vessel under this Act provisions that in the event the United States shall, through purchase or requisition, reacquire ownership of the vessel, payment or other compensation from the United States for such vessel shall be computed in accordance with the requirements of section 802 of the Merchant Marine Act, 1936, as amended, on the basis of the price at which the vessel was sold, whether or not a construction-differential subsidy shall have been paid or granted in respect of such vessel under the Merchant Marine Act, 1936, as amended, and that in the event of taking of the use of such vessel, charter, hire, or other compensation for the bareboat use thereof shall be based on the reasonable value of such use but at a rate not more than 15 per centum per annum of the price at which the vessel was sold hereunder.

SEC. 2. The Maritime Commission is authorized to reconvert or restore for commercial operation, including removal of national defense or war service features, any vessel authorized to be sold or chartered under the terms and conditions of section 1 hereof. The cost and expense thereof shall be considered as war costs and may be paid from the construction fund of the Maritime Commission,

or, in lieu thereof, may be allowed on the purchase price of the vessel by way of deduction, credit, or otherwise.

SEC. 3. All moneys received by the Maritime Commission under this Act shall be deposited in the construction fund of the Maritime Commission, and all disbursements made by the Maritime Commission in carrying out this Act shall be paid from such fund. The provisions of sections 201 (d), 204 (b), 207, 209 (a), and 905 (c) of the Merchant Marine Act, 1936, as amended, shall apply to all activities and functions which the Commission is authorized to perform under this Act.

(3)

SUBSTITUTE TEXT

[H. R. 5213, 78th Cong., 2d sess.]

A BILL To provide for the sale of certain Government-owned merchant vessels, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That (a) whenever in the discretion of the Commission it will aid in further carrying out the policies declared in section 101 and the objectives set forth in section 210 of the Merchant Marine Act, 1936, as amended, and will facilitate the adjustment of the merchant marine from war service to peacetime operations, the United States Maritime Commission, notwithstanding any other provision of law, is authorized to sell or charter under the terms and conditions of this Act any oceangoing vessel of two thousand gross tons or more, which has been (1) constructed by the Commission or constructed under contracts executed on behalf of the Commission, during the period commencing January 1, 1941, and ending on such date as the Commission shall fix but in no event later than one year after the termination of the present war, or (2) transferred to or otherwise acquired

by the Commission that was constructed within the continental limits of the United States during such period. In case of any such vessel which the Commission determines by the affirmative vote of four members to be not economically suited for general use in the carriage of commodities or general commercial operation, the Commission may, pursuant to such determination, exclude such vessel from the application of this Act and dispose of it under any other applicable provision of law, subject however to such conditions on the use thereof by the purchaser or charterer as to routes, trades, and commodities as the Commission may prescribe. No vessel otherwise subject to this Act, of which any other department or agency of the United States Government has the right to control, custody, or possession, shall be sold or chartered under this Act until such vessel is determined by such department or agency to be surplus to its needs or is returned or transferred to the Commission.

(b) As used in this Act—

(1) The term "Commission" means the United States Maritime Commission;

(2) The term "termination of the present war" means such time as may be fixed by proclamation or such earlier time as the Congress by concurrent resolution or the President may designate;

(3) The term "citizen of the United States" has the same meaning as when used in the Merchant Marine Act, 1936, as amended.

(c) This Act may be cited as the "Merchant-Ship Sales Act, 1944."

DETERMINATION OF DOMESTIC AND FOREIGN COST

SEC. 2. (a) For the purposes of this Act the Commission shall from time to time estimate and publish in the Federal Register for vessels to which section 1 applies, pre-war domestic costs and pre-war foreign costs as follows:

(1) For vessels constructed under Commission contracts for which pre-war construction-cost data are available with respect to construction before January 1, 1941, the pre-war domestic cost shall be determined by the Commission on the basis of the average construction costs of vessels constructed in the period beginning January 1, 1937, and ending December 31, 1940.

(2) For vessels of any type for which pre-war construction cost data under Commission contracts are not available by reason of no such vessels having been so constructed before January 1, 1941, the pre-war domestic cost shall be determined by the Commission on the basis of its estimate of the cost as if constructed under average conditions relating to labor, material, and other elements of cost obtaining in the period beginning January 1, 1937, and ending December 31, 1940.

(3) The pre-war foreign cost shall be determined by the Commission on the basis of its estimate of the cost of similar construction in a foreign country deemed by it to be substantially representative of foreign construction costs under conditions existing during the period prior to September 3, 1939, or in the discretion of the Commission, may, except in the case of Liberty-type vessels, be fixed at (but shall be not less than) 50 percent of the pre-war domestic cost as determined or fixed for the vessel under the preceding provisions of this subsection.

(4) Such pre-war domestic cost and pre-war foreign cost shall be inclusive of special features and betterments required for commercial operation on trade routes or services, but exclusive of national defense features and exclusive of the cost of restoring the vessel to condition for commercial operation.

(b) For the purpose of determining depreciated pre-war domestic or foreign costs of any such vessel to which section 1 applies, depreciation shall be computed on the basis of a twenty-year life for the vessel with such addi-

tional amount as shall be determined by the Commission after survey, as representing accelerated depreciation by reason of war service at a rate not to exceed $2\frac{1}{2}$ per centum per annum.

SALE AND CHARTER OF VESSELS TO CITIZENS

SEC. 3. (a) Any vessel to which section 1 applies may, in the discretion of the Commission, be sold to a citizen of the United States, for any type of operation in the foreign or domestic trade of the United States without restriction as to services, routes, or sailing schedules at a sales price not less than the depreciated pre-war domestic cost determined under section 2.

(b) Any vessel to which section 1 applies, other than a tanker, may, in the discretion of the Commission, be sold to a citizen of the United States at the depreciated pre-war foreign cost for operation solely on a specified trade route or routes in the foreign commerce of the United States, or for operation solely in the domestic commerce of the United States, or subject to an agreement that the vessel shall not without the consent of the Commission enter into any trade route established by the Commission as essential to the foreign commerce of the United States.

(c) Tankers to which section 1 applies may, in the discretion of the Commission, be sold to a citizen of the United States at the depreciated pre-war foreign cost for operation in the foreign trade of the United States (without regard to route or service) subject to the conditions that (1) the tanker may with the approval of the Commission be used in the domestic trade of the United States and (2) if so used in the domestic trade, there shall be an adjustment made with respect to the difference between the depreciated pre-war domestic cost and the depreciated pre-war foreign cost in the same manner as provided with respect to the adjustment under section 506 of the Merchant Marine Act, 1936, as amended, in cases where a vessel constructed and sold under title V of that Act for use in foreign trade is used in domestic trade. In case of a

tanker sold under this subsection or under subsection (a) of this section, the Commission may permit the operation of such tanker in commerce between foreign countries.

(d) The purchaser of a vessel under this section shall, subject to the provisions of the Act, pay to the Commission not less than 25 per centum of the purchase price of such vessel and the balance if any of such purchase price shall be payable under amortization provisions satisfactory to the Commission requiring periodic payments, with interest at $3\frac{1}{2}$ per centum per annum, secured by a preferred mortgage on the vessel sold and otherwise as the Commission may determine.

(e) Any vessel to which section 1 applies, other than a tanker, may in the discretion of the Commission be demised on bare-boat charter to citizens of the United States without advertisement or competition for a fair rate of charter hire, which rate, except under special circumstances upon the affirmative vote of four members of the Commission, shall, if the vessel is demised for operation without restriction as to route or service, be not less than 9 per centum per annum upon the pre-war domestic cost determined in accordance with subsection (a) of section 2 plus $3\frac{1}{2}$ per centum of the depreciated domestic cost computed annually upon the basis of a twenty-year life of the vessel, or if demised for operation restricted to specified routes and services prescribed by the Commission, shall be not less than 9 per centum of the pre-war foreign cost as determined in accordance with subsection (a) of section 2, plus $3\frac{1}{2}$ per centum of the depreciated domestic cost computed annually upon the basis of a twenty-year life of the vessel. The provisions of sections 708, 709, 710, 712, and 713 of the Merchant Marine Act, 1936, as amended, shall be applicable to charters made under authority of this subsection.

(f) In the event that the demand for purchase or charter of vessels under this section is at any time in excess of the number of such vessels available for disposition under this section, sales or charters under this Act may be made in such order as the Commission may deem appropriate to

best carry out the policies and purposes of the Merchant Marine Act, 1936.

SALES OF VESSELS NOT NEEDED FOR UNITED STATES
COMMERCE OR DEFENSE

SEC. 4. (a) Any vessel to which section 1 applies and which the Commission finds to be not necessary for the domestic or foreign commerce of the United States and after consultation with the Secretary of the Navy to be not necessary for the national defense, may in the discretion of the Commission be sold to a person not a citizen of the United States subject to the provisions of subsections (b), (c), (d), and (e) of this section.

(b) In the case of any vessel other than a Liberty type vessel, sale may be made under this section only after the Commission shall have made a public offer open for such reasonable period as it may fix to sell the vessel under section 3 hereof to citizens of the United States and a sale is not consummated thereunder.

(c) Sales of vessels other than Liberty type vessels shall be made under this section pursuant to advertisement and competitive bids and no bid for less than the depreciated foreign cost for the vessel as determined under section 2 shall be accepted.

(d) Vessels of the Liberty type may be sold under this subsection by negotiation at not less than the depreciated pre-war foreign cost.

(e) Payment of the sales price for vessels sold under this section shall be made upon such terms and conditions as the Commission with the approval of the President shall prescribe. In connection with sales to noncitizens, the Commission is authorized to avail itself of the services of any other agency of the United States Government with duties or powers in respect of extension of credit or financing services, and any such agency is authorized to extend such facilities and services to the Commission or to the purchaser for the purposes hereof.

States provisions, binding on, and running with the title of, the vessel, to the effect that in the event the United States, prior to the termination of the existing national emergency declared by the President on May 27, 1941, or prior to the expiration of five years from the termination of such emergency, charters or takes such vessel for bare boat use, the charter hire paid to the person who is the owner of the vessel, shall be at a rate in no event greater than 15 per centum per annum of the adjusted basis of the vessel in the hands of such owner as of the date of such charter or taking, determined under section 113 (b) of the Internal Revenue Code, and that in the event prior to the termination of such emergency or prior to the expiration of such five years, such vessel is repurchased or requisitioned for title by the United States, or is lost by reason of causes for which the United States is responsible, the compensation paid to the person who is the owner of the vessel shall not exceed the adjusted basis of the vessel in the hands of such person as of the date of requisition or loss, determined under section 113 (b) of the Internal Revenue Code.

GENERAL PROVISIONS

SEC. 13. (a) The Commission is authorized to reconvert or restore for normal operation in commercial services, including removal of national defense or war service features, any vessel authorized to be sold or chartered under this Act. The Commission is authorized to make such replacements, alterations, or modifications with respect to any vessel authorized to be sold or chartered under this Act, and to install therein such special features, as may be necessary or advisable to make such vessel suitable for commercial operation on trade routes or services or comparable as to commercial utility to other such vessels of the same general type.

(b) The provisions of section 202 of the War Mobilization and Reconversion Act of 1944 shall not apply to con-

tracts of the Commission for or relating to construction of ships.

(c) Notwithstanding the provisions of section 27 of the Merchant Marine Act, 1920, as amended (U. S. C., title 46, sec. 883), no vessel sold or chartered by the Commission under this Act to a citizen of the United States shall be prohibited from engaging in the coastwise trade of the United States while owned by or chartered to such citizen or citizen successors in interest merely because it was under foreign registry on May 27, 1941, and prior to its sale or charter under this Act to such citizen, if it is otherwise entitled under the laws of the United States to engage in such trade.

(d) All moneys received by the Commission under this Act shall be deposited in the construction fund of the Commission, and all disbursements made by the Commission in carrying out this Act shall be paid from such fund. The provisions of sections 201 (d), 204 (b), 207, 209 (a), and 905 (c) of the Merchant Marine Act, 1936, as amended, shall apply to all activities and functions which the Commission is authorized to perform under this Act.

REPORTS

SEC. 14. The Commission shall, at the beginning of the second regular session of the Seventy-ninth Congress, and every six months thereafter, make a report to Congress with respect to all activities and transactions under this Act which have not been covered by any previous such report.

TERMINATION DATE

SEC. 15. No contract of sale or of charter shall be made under this Act after the expiration of two years from the date of the cessation of hostilities.

- (7) [H. R. 3603, 79th Cong., 1st sess. as amended
and passed in the House]

AN ACT To provide for the sale of surplus war-built vessels, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Merchant Ship Sales Act of 1945."

DECLARATION OF POLICY

SEC. 2. (a) It is necessary for the national defense and development of the foreign and domestic commerce of the United States that the United States have a merchant marine (1) sufficient to carry its domestic water-borne commerce and a substantial portion of its water-borne export and import foreign commerce and to provide shipping service on all routes essential for maintaining the flow of such domestic and foreign water-borne commerce at all times; (2) capable of serving as a naval and military auxiliary in time of war or national emergency; (3) owned and operated under the United States flag by citizens of the United States; (4) composed of the best-equipped, safest, and most suitable types of vessels, constructed in the United States and manned with a trained and efficient citizen personnel; and (5) supplemented by American-owned facilities for repairs, marine insurance, and other auxiliary services.

(b) It is hereby declared to be the policy of this Act to foster the development and encourage the maintenance of such a merchant marine, and to facilitate the adjustment of the merchant marine from war service to peacetime operations.

SEC. 3. As used in this Act the term—

(a) "Commission" means the United States Maritime Commission.

(b) "War-built vessel" means an oceangoing vessel of two thousand gross tons or more, owned by the United States and suitable for commercial use—

(1) which was constructed or contracted for by or for the account of the United States during the period beginning January 1, 1941, and ending with June 30, 1945; or

(2) which, having been constructed during the period beginning September 3, 1939, and ending with June 30, 1945, was acquired by the United States during such period.

(c) "Prewar domestic cost", as applied to any type of vessel, means the amount determined by the Commission, and published by the Commission in the Federal Register, to be the amount for which a standard vessel of such type could have been constructed (without its national defense features) in the United States under normal conditions relating to labor, materials, and other elements of cost, obtaining on or about January 1, 1941. In no case shall the prewar domestic cost of any type of vessel be considered to be greater than 80 per centum of the average construction cost of vessels of the same type delivered during the calendar year 1944.

(d) "Statutory sales price", as applied to a particular vessel, means, in the case of a dry-cargo vessel, an amount equal to 55 per centum of the prewar domestic cost of that type of vessel, unless it is being sold or chartered to an unsubsidized operator, in which case such term means an amount equal to 50 per centum of such cost, and in the case of a tanker, such term means an amount equal to 100 per centum of the prewar domestic cost of a tanker of that type, such amount in each case being adjusted as follows:

(1) If the Commission is of the opinion that the vessel is not in class, there shall be subtracted the amount estimated by the Commission as the cost of putting the vessel in class.

(2) If the Commission is of the opinion that the vessel lacks desirable features which are incorporated in the standard vessel used for the purpose of determining prewar domestic cost, and that the statutory sales price (unadjusted) would be lower if the standard vessel had also lacked such features, there shall be subtracted the amount estimated by the Commission as the amount of such resulting difference in statutory sales price.

(3) If the Commission is of the opinion that the vessel contains desirable features which are not incorporated in the standard vessel used for the purpose of determining prewar domestic cost, and that the statutory sales price (unadjusted) would be higher if the standard vessel had also contained such features, there shall be added the amount estimated by the Commission as the amount of such resulting difference in statutory sales price.

(4) There shall be subtracted, as representing normal depreciation, an amount computed by applying to the statutory sales price (determined without regard to this paragraph) the rate of 5 per centum per annum for the period beginning with the date of the original delivery of the vessel by its builder and ending with the date of sale or charter to the applicant in question, and there shall also be subtracted an amount computed by applying to the statutory sales price (determined without regard to this paragraph) such rate not in excess of 3 per centum per annum in the case of a vessel other than a tanker, and not in excess of 4 per centum per annum in the case of a tanker, for such period or periods of war service as the Commission determines will make reasonable allowance for excessive wear and tear by reason of war service which cannot be or has not been otherwise compensated for under this subsection.

No adjustment shall be made under this Act which will result in a statutory sales price which (1) in the case of any

dry-cargo vessel, will be less than 35 per centum for an unsubsidized operator, or 40 per centum for any other operator, of the average construction cost (without national defense features) of vessels of the same type delivered during the calendar year 1944, except in the case of any type of dry-cargo vessel the principal deliveries of which were made after the calendar year 1944, there shall be used in lieu of such year 1944 such period of not less than six consecutive calendar months as the Commission shall find to be most representative of war production costs of such type, or (2) in the case of a tanker will be less than 50 per centum of the average construction cost (without national defense features) of tankers of the same type delivered during the calendar year 1944, in each case as determined by the Commission. For the purposes of this Act all dry-cargo Liberty vessels shall be considered to be vessels of one and the same type.

(c) "Unsubsidized operator" means a citizen of the United States other than one who, on the date of the enactment of this Act, is a contractor under an operating-differential subsidy contract made under the Merchant Marine Act, 1936, as amended.

(f) "Cessation of hostilities" means the date proclaimed by the President as the date of the cessation of hostilities in the present war, or the date so specified in a concurrent resolution of the two Houses of the Congress, whichever is the earlier.

(g) "Citizen of the United States" includes a corporation, partnership, or association only if it is a citizen of the United States within the meaning of section 2 of the Shipping Act of 1916, as amended.

SALES OF WAR-BUILT VESSELS TO CITIZENS

SEC. 4. (a) Any citizen of the United States may make application to the Commission to purchase a war-built vessel, under the jurisdiction and control of the Commission, at the statutory sales price. If the Commission determines that the applicant possesses the ability, experience, financial

resources and other qualifications necessary to enable him to operate and maintain the vessel under normal competitive conditions and that such sale will aid in carrying out the policies of this Act, the Commission shall sell such vessel to the applicant at the statutory sales price.

(b) At the time of sale, the purchaser shall pay to the Commission at least 25 per centum of the statutory sales price. The balance of the statutory sales price shall be payable in not more than twenty equal annual installments, with interest on the portion of the statutory sales price remaining unpaid, at the rate of $3\frac{1}{2}$ per centum, or shall be payable under such other amortization provisions which permit the purchaser to accelerate payment of the unpaid balance as the Commission deems satisfactory. The obligation of the purchaser with respect to payment of such unpaid balance with interest shall be secured by a preferred mortgage on the vessel sold.

(c) The contract of sale, and the mortgage given to secure the payment of the unpaid balance of the purchase price, shall not restrict the lawful or proper use or operation of the vessel.

CHARTER OF WAR-BUILT VESSELS TO CITIZENS

SEC. 5. (a) Any citizen of the United States may make application to the Commission to charter a war-built dry-cargo vessel, under the jurisdiction and control of the Commission, for bare boat use. The Commission may, in its discretion, either reject or approve the application, but shall not so approve unless in its opinion the chartering of such vessel to the applicant would be consistent with the policies of this Act. No vessel shall be chartered under this section unless it has been offered for sale under section 4 for a period of at least three months and no sale has been consummated under such section during such period.

(b) The charter hire for any vessel chartered under the provisions of this section shall be fixed by the Commission at such rate as the Commission determines to be consistent with the policies of this Act, but, except upon the affirmative

vote of not less than four members of the Commission, such rate shall not be less than 15 per centum per annum of the statutory sales price (computed as of the date of charter). Except in the case of vessels having passenger accommodations for not less than eighty passengers, rates of charter hire fixed by the Commission on any war-built vessel which differ from the rate specified in this subsection shall not be less than the prevailing world market charter rates for similar vessels for similar use as determined by the Commission.

(c) The provisions of sections 708, 709, 710, 712, and 713, of the Merchant Marine Act, 1936, as amended, shall be applicable to charters made under this section.

SALE OF WAR-BUILT VESSELS TO PERSONS NOT CITIZENS OF THE UNITED STATES

Sec. 6. (a) Any person not a citizen of the United States may make application to the Commission to purchase a war-built vessel (other than a P-2 type or other passenger type and other than a bulk dry-cargo Liberty type), under the jurisdiction and control of the Commission. If the Commission determines—

(1) that the applicant has the financial resources, ability, and experience necessary to enable him to fulfill all obligations with respect to payment of any deferred portion of the purchase price, and that sale of the vessel to him would not be inconsistent with any policy of the United States in respect of relations with other countries; and

(2) that such vessel is not necessary to the defense of the United States; and

(3) that such vessel is not necessary to the promotion and maintenance of an American merchant marine described in section 2; and

(4) that for a reasonable period of time which in the case of tankers and "C" type vessels shall not end before six months after the date of the enactment of

this Act, such vessel has been available for sale at the statutory sales price to citizens of the United States, or for charter under section 5 to citizens of the United States, and that no responsible offer has been made by a citizen of the United States to purchase or charter such vessel;

then the Commission is authorized to approve the application and sell such vessel to the applicant at not less than the statutory sales price. The determination of the Commission under paragraph (2) shall be made only after consultation with the Secretary of War and the Secretary of the Navy. Notwithstanding paragraph (4) of this subsection, not to exceed five "C" type vessels actually under charter to noncitizens for at least one year prior to the date of the enactment of this Act may be sold to noncitizens at any time after such date of enactment at not less than the statutory sales price.

(b) Notwithstanding any other provision of law, no war-built vessel shall be sold to any person not a citizen of the United States, except in accordance with subsection (a), or upon terms or conditions more favorable than those at which such war-built vessel is offered to a citizen of the United States.

ORDER OF PREFERENCES

SEC. 7. (a) In exercising its powers under this Act and under other provisions of law with respect to the sale and charter of war-built vessels, the Commission shall give preference to citizen applicants over noncitizen applicants, and as between citizen applicants to purchase and citizen applicants to charter, shall, so far as practicable and consistent with the policies of this Act, give preference to citizen applicants to purchase. In determining the order of preference between citizen applicants to purchase or between citizen applicants to charter, the Commission shall consider, among other relevant factors, the extent to which losses and requisitions of the applicant's prewar tonnage have been overcome and shall in all cases, in the sale and

charter of a war-built vessel, give preference in such sale or charter, as the case may be, to the former owner of such vessel, or to the person for whom the vessel was constructed but to whom delivery thereof was prevented by the United States Maritime Commission. In determining the order of preference between noncitizen applicants to purchase, the Commission shall consider the extent to which losses in prewar tonnage of the various member nations of the United Nations, incurred in the interests of the war effort, have been overcome, and the relative effects of such losses upon the national economy of such member nations.

(b) After the cessation of hostilities, operation of vessels in commercial service by the United States Maritime Commission, either for its own account or through operating agents under agency agreements, shall be continued only to the extent necessary to effect orderly transfer of vessels to private operation.

EXCHANGE OF VESSELS

SEC. 8. (a) The Commission is authorized to acquire, in exchange for an allowance of a credit on the purchase of any war-built vessel under this Act—

(1) Any vessel owned by a citizen of the United States, other than a vessel purchased under this Act; or

(2) Any vessel owned by a foreign corporation, if—

(A) the vessel was constructed in the United States, and has, after December 7, 1941, been chartered to, or otherwise taken for use by, the United States; and

(B) the controlling interest in such corporation is, at the time of acquisition, of such vessel hereunder, owned by a citizen or citizens of the United States, and has been so owned for a period of at least three years immediately prior to such acquisition; and

(C) such corporation agrees that the war-built vessel purchased with the use of such credit shall be documented under the laws of the United States.

Such allowance shall not be applied upon the cash payment required under section 4. The amount of such allowance shall be determined by the Commission, having regard to the tonnage of the vessel being exchanged, but shall in no event be greater than 10 per centum of the average construction cost (without national defense features) of war-built vessels (of the same type as that being purchased) delivered during the calendar year 1944, except that in the case of any type of dry-cargo vessel the principal deliveries of which were made after the calendar year 1944, there shall be used in lieu of the year 1944 such period of not less than six consecutive months as the Commission shall find to be most representative of war production costs of such type. In any case where the vessel offered in exchange was acquired from the United States, the exchange allowance under this section shall, unless subsequent to its sale by the United States it was acquired by a bona fide purchaser for value, in no event be greater than the price at which the vessel was acquired from the United States plus the depreciated cost of any capital improvements thereon. No vessel which is under charter to the United States on the date of the enactment of this Act and which, pursuant to the terms of such charter, has been restored to condition by the United States, or for the restoring of which pursuant to the terms of such charter a cash allowance has been made to the owner, may be exchanged under this section.

(b) The Commission is also authorized to make available any war-built vessel for transfer to any citizen in complete or partial settlement of any claim of such citizen against the United States (1) for just compensation upon the requisition for title of any vessel which he owned, or (2) for indemnity for the loss of any vessel owned by him and taken by the United States for use; *Provided*, That the value or price attributed to any war-built vessel made available under the provisions of this subsection shall not be less than the price at and for which such vessel may be sold under the provisions of this Act.

(c) Except as hereinafter provided, a war-built vessel shall not be deemed to be a "new vessel" for the purposes of section 510 of the Merchant Marine Act, 1936, as amended, but shall be deemed a "new vessel" for the purposes of section 511 of such Act. Section 510 (c) of the Merchant Marine Act, 1936, as amended, shall be applicable with respect to vessels exchanged under this section to the same extent as applicable to obsolete vessels exchanged under section 510 of such Act.

ADJUSTMENT FOR PRIOR SALES TO CITIZENS

SEC. 9. (a) A citizen of the United States who on the date of the enactment of this Act—

(1) owns a vessel which he purchased from the Commission prior to such date, and which was delivered by its builder after December 31, 1940; or

(2) is party to a contract with the Commission to purchase from the Commission a vessel, which has not yet been delivered to him; or

(3) owns a vessel on account of which a construction-differential subsidy was paid, or agreed to be paid, by the Commission under section 504 of the Merchant Marine Act, 1936, as amended, and which was delivered by its builder after December 31, 1940; or

(4) is party to a contract with a shipbuilder for the construction for him of a vessel, which has not yet been delivered to him, and on account of which a construction-differential subsidy was agreed, prior to such date, to be paid by the Commission under section 504 of the Merchant Marine Act, 1936, as amended;

shall, except as hereinafter provided, be entitled to an adjustment in the price of such vessel under this section if he makes application therefor, in such form and manner as the Commission may prescribe, within sixty days after the date of the enactment of this Act. No adjustment shall be made

under this section in respect of any vessel the contract for the construction of which was made after June 30, 1945, under the provisions of title V (including sec. 504) or title VII of the Merchant Marine Act, 1936, as amended.

(b) Such adjustment shall be made, as hereinafter provided, by treating the vessel as if it were being sold to the applicant on the date of the enactment of this Act, and not before that time. The amount of such adjustment shall be determined as follows:

(1) The Commission shall credit the applicant with the excess of the cash payments made upon the original purchase price of the vessel over 25 per centum of the statutory sales price of the vessel as of such date of enactment. If such payment was less than 25 per centum of the statutory sales price of the vessel, the applicant shall pay the difference to the Commission.

(2) The mortgage indebtedness of the applicant with respect to the vessel shall be canceled and a new mortgage indebtedness, payable in not more than twenty equal annual installments, with interest on the portion of the statutory sales price remaining unpaid, at the rate of $3\frac{1}{2}$ per centum per annum, shall be assumed by the applicant.

(3) The new mortgage indebtedness shall be in an amount equal to the excess of the statutory sales price of the vessel as of the date of the enactment of this Act over the sum of the cash payment retained by the United States under paragraph (1) plus the readjusted trade-in allowance (determined under paragraph (6)) with respect to any vessel exchanged by the applicant on the original purchase.

(4) The Commission shall credit the applicant with the excess, if any, of the sum of the cash payments made by the applicant upon the original purchase price of the vessel plus the readjusted trade-in allowance (determined under paragraph (6)) over the statutory sales

price of the vessel as of the date of the enactment of this Act to the extent not credited under paragraph (1).

(5) The Commission shall also credit the applicant with an amount equal to interest at the rate of $3\frac{1}{2}$ per centum per annum (for the period beginning with the date of the original delivery of the vessel to the applicant and ending with the date of the enactment of this Act) on the excess of the original purchase price of the vessel over the amount of any allowance allowed by the Commission on the exchange of any vessel on such purchase; the amount of such credit first being reduced by any interest on the original mortgage indebtedness accrued up to such date of enactment and unpaid. Interest so accrued and unpaid shall be canceled.

(6) The applicant shall credit the Commission with all amounts paid by the United States to him as charter hire for use of the vessel (exclusive of service, if any, required under the terms of the charter) under any charter party made prior to the date of the enactment of this Act, and any charter hire for such use accrued up to such date of enactment and unpaid shall be canceled; and the Commission shall credit the applicant with the amount that would have been paid by the United States to the applicant as charter hire for bareboat use of vessels exchanged by the applicant on the original purchase (for the period beginning with date on which the vessels so exchanged were delivered to the Commission and ending with the date of the enactment of this Act).

(7) The allowance made to the applicant on any vessel exchanged by him on the original purchase shall be readjusted so as to limit such allowance to the amount provided for under section 8.

(8) There shall be subtracted from the sum of the credits in favor of the Commission under the foregoing provisions of this subsection the amount of any overpayments of Federal taxes by the applicant resulting

from the application of subsection (c) (1), and there shall be subtracted from the sum of the credits in favor of the applicant under the foregoing provisions of this subsection the amount of any deficiencies in Federal taxes of the applicant resulting from the application of subsection (c) (1). If, after making such subtractions, the sum of the credits in favor of the applicant exceeds the sum of the credits in favor of the Commission, such excess shall be paid by the Commission to the applicant. If, after making such subtractions, the sum of the credits in favor of the Commission exceeds the sum of the credits in favor of the applicant, such excess shall be paid by the applicant to the Commission. Upon such payment by the Commission or the applicant, such overpayments shall be treated as having been refunded and such deficiencies as having been paid.

For the purposes of this subsection, the purchase price of a vessel on account of which a construction differential subsidy was paid or agreed to be paid under section 504 of the Merchant Marine Act, 1936, as amended, shall be the net cost of the vessel to the owner.

(c) An adjustment shall be made under this section only if an adjustment is applied for on all vessels of the applicant with respect to which an adjustment may be made under this section, and then only if the applicant enters into an agreement with the Commission to the effect that, in the case of each such vessel—

(1) depreciation and amortization allowed or allowable with respect to the vessel up to the date of the enactment of this Act for Federal tax purposes shall be treated as not having been allowable; amounts credited to the Commission under subsection (b) (6) shall be treated for Federal tax purposes as not having been received or accrued as income; amounts credited to the applicant under subsection (b) (6) shall be treated for Federal tax purposes as having been received and accrued as income in the taxable year in which falls the

date of the enactment of this Act; and the amount credited by the Commission under subsection (b) (5) shall be treated for Federal tax purposes as having been received and accrued as income ratably over the period beginning with the date of the original delivery of the vessel to the applicant and ending with the day before the date of the enactment of this Act;

(2) the liability of the United States for use (exclusive of service, if any, required under the terms of the charter), of the vessel on or after the date of the enactment of this Act under any charter party shall not exceed 15 per centum per annum of the statutory sales price of the vessel as of such date of enactment; and the liability of the United States under any such charter party for loss of the vessel shall be determined on the basis of the statutory sales price as of the date of the enactment of this Act, depreciated to the date of loss at the rate of 5 per centum per annum, plus not to exceed 3 per centum per annum as representing excessive wear and tear by reason of war service; and

(3) in the event the United States, prior to the termination of the existing national emergency declared by the President on May 27, 1941, uses such vessel pursuant to a taking, or pursuant to a bareboat charter made, on or after the date of the enactment of this Act, the compensation to be paid to the purchaser, his receivers, and trustees, shall in no event be greater than 15 per centum per annum of the statutory sales price as of such date.

(d) Section 506 of the Merchant Marine Act, 1936, as amended, shall not apply to any vessel with respect to which an adjustment is made under this section.

IMITATION ON ELIGIBILITY FOR BENEFITS OF ACT

SEC. 10. No person shall be eligible to purchase or charter a war-built vessel under this Act, or to receive an adjust-

ment under section 9, unless such person makes an agreement with the Commission to the effect that the liability of the United States under any charter party or taking for use, made or effected prior to the date of the enactment of this Act, for the loss, on or after such date of enactment and prior to September 3, 1947, of any vessel owned by such person and under charter to the United States, (excluding a vessel with respect to which an application under section 9 can be made) shall be limited to an amount equal to just compensation as of the date of said loss, determined pursuant to section 902 of the Merchant Marine Act, 1936, as amended, or such amount as may be mutually agreed upon subsequent to the date of the enactment of this Act as just compensation under the provisions of section 902.

NATIONAL DEFENSE RESERVE FLEET

SEC. 11. The Commission shall place in a national defense reserve (1) such vessels owned by it as, after consultation with the Secretary of War and the Secretary of the Navy, it deems should be retained for the national defense, and (2) all vessels owned by it on September 3, 1947, for the sale of which a contract has not been made by that time, except those determined by the Commission to be of insufficient value for commercial and national defense purposes to warrant their maintenance and preservation. A vessel under charter on that date shall not be placed in the reserve until the termination of such charter. Unless otherwise provided for by law, all vessels placed in such reserve shall be preserved and maintained by the Commission for the purpose of national defense. A vessel placed in such reserve shall in no case be used for commercial operation, except that any such vessel may be used during any period in which vessels may be requisitioned under section 902 of the Merchant Marine Act, 1936, as amended.

The Commission is authorized to lend to any State maritime academy, for such period or periods, definite or indefinite, as the Commission may prescribe, any war-built vessel or vessels for use by such academy in connection with its course of instruction.

GENERAL PROVISIONS

SEC. 12. (a) The Commission is authorized to reconvert or restore for normal operation in commercial services, including removal of national defense or war service features, any vessel authorized to be sold or chartered under this Act. The Commission is authorized to make such replacements, alterations or modifications with respect to any vessel authorized to be sold or chartered under this Act, and to install therein such special features, as may be necessary or advisable to make such vessel suitable for commercial operation on trade routes or services or comparable as to commercial utility to other such vessels of the same general type.

(b) The provisions of section 202 of the War Mobilization and Reconversion Act of 1944 shall not apply to contracts of the Commission for or relating to construction of ships.

(c) Notwithstanding the provisions of section 27 of the Merchant Marine Act, 1920, as amended (U. S. C., title 46, sec. 883), no vessel sold or chartered by the Commission under this Act to a citizen of the United States shall be prohibited from engaging in the coastwise trade of the United States while owned by or chartered to such citizen or citizen successors in interest merely because it was under foreign registry on May 27, 1941, and prior to its sale or charter under this Act to such citizen, if it is otherwise entitled under the laws of the United States to engage in such trade.

(d) The provisions of section 201 (d), 204 (b), 207, 209 (a) and 905 (c) of the Merchant Marine Act, 1936, as amended, shall apply to all activities and functions which the Commission is authorized to perform under this Act.

REPORTS

SEC. 13. The Commission shall, at the beginning of the second regular session of the Seventy-ninth Congress, and

every six months thereafter, make a report to Congress with respect to all activities and transactions under this Act which have not been covered by any previous such report.

TERMINATION DATE

SEC. 14. No contract of sale or of charter shall be made under this Act after September 2, 1947.

(8) [H. R. 3603, 79th Cong., 1st sess., as amended in the Senate]

AN ACT To provide for the sale of surplus war-built vessels, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Merchant Ship Sales Act of 1945."

DECLARATION OF POLICY

SEC. 2. (a) It is necessary for the national security and development and maintenance of the domestic and the export and import foreign commerce of the United States that the United States have an efficient and adequate American-owned merchant marine (1) sufficient to carry its domestic water-borne commerce and a substantial portion of its water-borne export and import foreign commerce and to provide shipping service on all routes essential for maintaining the flow of such domestic and foreign water-borne commerce at all times; (2) capable of serving as a naval and military auxiliary in time of war or national emergency; (3) owned and operated under the United States flag by citizens of the United States; (4) composed of the best-equipped, safest, and most suitable types of vessels, constructed in the United States and manned with a trained and efficient citizen personnel; and (5) supplemented by efficient American-owned facilities for shipbuilding and ship repair, marine insurance, and other auxiliary services.

(b) It is hereby declared to be the policy of this Act to foster the development and encourage the maintenance of

such a merchant marine, and to facilitate the adjustment of the merchant marine from war service to peacetime operations.

DEFINITIONS

SEC. 3. As used in this Act the term—

(a) "Commission" means the United States Maritime Commission.

(b) "War-built vessel" means an oceangoing vessel of one thousand five hundred gross tons or more, owned by the United States and suitable for commercial use—

(1) which was constructed or contracted for by or for the account of the Commission during the period, beginning January 1, 1941, and ending September 2, 1945; or

(2) which, having been constructed during the period beginning September 3, 1939, and ending September 2, 1945, was acquired by the Commission or the War Shipping Administration during such period.

(c) "Prewar domestic cost", as applied to any type of vessel, means the amount determined by the Commission, and published by the Commission in the Federal Register, to be the amount for which a standard vessel of such type could have been constructed (without its national defense features) in the United States under normal conditions relating to labor, materials, and other elements of cost, obtaining on or about January 1, 1941. In no case shall the prewar domestic cost of any type of vessel be considered to be greater than 80 per centum of the domestic war cost of vessels of the same type.

(d) "Statutory sales price", as applied to a particular vessel, means, in the case of a dry-cargo vessel, an amount equal to 50 per centum of the prewar domestic cost of that type of vessel, and in the case of a tanker, such term means an amount equal to 60 per centum of the prewar domestic

cost of a tanker of that type, such amount in each case being adjusted as follows:

(1) If the Commission is of the opinion that the vessel is not in class, there shall be subtracted the amount estimated by the Commission as the cost of putting the vessel in class.

(2) If the Commission is of the opinion that the vessel lacks desirable features which are incorporated in the standard vessel used for the purpose of determining prewar domestic cost, and that the statutory sales price (unadjusted) would be lower if the standard vessel had also lacked such features, there shall be subtracted the amount estimated by the Commission as the amount of such resulting difference in statutory sales price.

(3) If the Commission is of the opinion that the vessel contains desirable features which are not incorporated in the standard vessel used for the purpose of determining prewar domestic cost, and that the statutory sales price (unadjusted) would be higher if the standard vessel had also contained such features, there shall be added the amount estimated by the Commission as the amount of such resulting difference in statutory sales price.

(4) There shall be subtracted, as representing normal depreciation, an amount computed by applying to the statutory sales price (determined without regard to this paragraph) the rate of 5 per centum per annum for the period beginning with the date of the original delivery of the vessel by its builder and ending with the date of sale or charter to the applicant in question, and there shall also be subtracted an amount computed by applying to the statutory sales price (determined without regard to this paragraph) such rate not in excess of 3 per centum per annum in the case of a vessel other than a tanker, and not in excess of 4 per centum per annum in the case of a tanker, for such period or

periods of war service as the Commission determines will make reasonable allowance for excessive wear and tear by reason of war service which cannot be or has not been otherwise compensated for under this subsection.

No adjustment, except in respect of passenger vessels constructed before January 1, 1941, shall be made under this Act which will result in a statutory sales price which (1) in the case of dry-cargo vessels (except Liberty type vessels) will be less than 35 per centum of the domestic war cost of vessels of the same type, (2) in the case of any Liberty type vessel will be less than $31\frac{1}{2}$ per centum of the domestic war cost of vessels of such type, or (3) in the case of a tanker will be less than 42 per centum of the domestic war cost of tankers of the same type. For the purposes of this Act all Liberty vessels shall be considered to be vessels of one and the same type.

(e) "Domestic war cost" as applied to any type of vessel means the average construction cost (without national defense features) as determined by the Commission, of vessels of such type delivered during the calendar year 1944, except in case of any type of vessel the principal deliveries of which were made other than in the calendar year 1944, there shall be used in lieu of such year 1944 such period of not less than six consecutive calendar months as the Commission shall find to be most representative of war production costs of such type.

(f) "Cessation of hostilities" means the date proclaimed by the President as the date of the cessation of hostilities in the present war, or the date so specified in a concurrent resolution of the two Houses of the Congress, whichever is the earlier.

(g) "Citizen of the United States" includes a corporation, partnership, or association only if it is a citizen of the United States within the meaning of section 2 of the Shipping Act of 1916, as amended. The term "affiliated interest" as used in sections 9 and 10 of this Act includes

any person affiliated or associated with a citizen applicant for benefits under this Act who the Commission, pursuant to rules and regulations prescribed hereunder, determines should be so included in order to carry out the policy and purposes of this Act.

SALES OF WAR-BUILT VESSELS TO CITIZENS

SEC. 4. (a) Any citizen of the United States may make application to the Commission to purchase a war-built vessel, under the jurisdiction and control of the Commission, at the statutory sales price. If the Commission determines that the applicant possesses the ability, experience, financial resources, and other qualifications necessary to enable him to operate and maintain the vessel under normal competitive conditions, and that such sale will aid in carrying out the policies of this Act, the Commission shall sell such vessel to the applicant at the statutory sales price.

(b) At the time of sale, the purchaser shall pay to the Commission at least 25 per centum of the statutory sales price. The balance of the statutory sales price shall be payable in not more than twenty equal annual installments, with interest on the portion of the statutory sales price remaining unpaid, at the rate of $3\frac{1}{2}$ per centum per annum, or shall be payable under such other amortization provisions which permit the purchaser to accelerate payment of the unpaid balance as the Commission deems satisfactory. The obligation of the purchaser with respect to payment of such unpaid balance with interest shall be secured by a preferred mortgage on the vessel sold.

(c) The contract of sale, and the mortgage given to secure the payment of the unpaid balance of the purchase price, shall not restrict the lawful or proper use or operation of the vessel.

CHARTER OF WAR-BUILT VESSELS TO CITIZENS

SEC. 5. (a) Any citizen of the United States may make application to the Commission to charter a war-built dry-cargo vessel, under the jurisdiction and control of the Commission, for bare-boat use. The Commission may, in its discretion, either reject or approve the application, but shall not so approve unless in its opinion the chartering of such vessel to the applicant would be consistent with the policies of this Act.

(b) The charter hire for any vessel chartered under the provisions of this section shall be fixed by the Commission at such rate as the Commission determines to be consistent with the policies of this Act, but, except upon the affirmative vote of not less than four members of the Commission, such rate shall not be less than 15 per centum per annum of the statutory sales price (computed as of the date of charter). Except in the case of vessels having passenger accommodations for not less than eighty passengers, rates of charter hire fixed by the Commission on any war-built vessel which differ from the rate specified in this subsection shall not be less than the prevailing world market charter rates for similar vessels for similar use as determined by the Commission.

(c) The Provisions of sections 708, 709, 710, 712, and 713, of the Merchant Marine Act, 1936, as amended, shall be applicable to charters made under this section.

**SALE OF WAR-BUILT VESSELS TO PERSONS NOT CITIZENS
OF THE UNITED STATES**

SEC. 6. (a) Any person not a citizen of the United States may make application to the Commission to purchase a war-built vessel (other than a P-2 type or other passenger type and other than a bulk dry-cargo Liberty type), under the jurisdiction and control of the Commission. If the Commission determines—

(1) that the applicant has the financial resources, ability, and experience necessary to enable him to fulfill all obligations with respect to payment of any deferred portion of the purchase price, and that sale of the vessel to him would not be inconsistent with any policy of the United States in permitting foreign sales under section 9 of the Shipping Act, 1916, as amended; and

(2) after consultation with the Secretary of the Navy, that such vessel is not necessary to the defense of the United States; and

(3) that such vessel is not necessary to the promotion and maintenance of an American merchant marine described in section 2; and

(4) that for a reasonable period of time, which in the case of tankers and "C" type vessels shall not end before ninety days after publication of the applicable prewar domestic cost in the Federal Register under sub-section 3(c) of this Act such vessel has been available for sale at the statutory sales price to citizens of the United States, or for charter under section 5 to citizens of the United States, and that no responsible offer has been made by a citizen of the United States to purchase or charter such vessel;

then the Commission is authorized to approve the application and sell such vessel to the applicant at not less than the statutory sales price. Notwithstanding paragraph (4) of this subsection, not to exceed ten "C" type vessels, except C-3's, may be sold to noncitizens at any time after such date of publication at not less than the statutory sales price.

(b) Notwithstanding any other provision of law, no war-built vessel shall be sold to any person not a citizen of the United States, except in accordance with subsection (a), or upon terms or conditions more favorable than those at which such war-built vessel is offered to a citizen of the United States, but where the vessel so sold is being transferred to foreign registry and flag, the mortgage securing

the unpaid balance of the purchase price and interest thereon shall contain provisions according to such mortgage the priorities over other liens and encumbrances accorded such mortgages on merchant vessels under the laws of such registry and flag.

ORDER OF PREFERENCES

SEC. 7. (a) In exercising its powers under this Act and under other provisions of law with respect to the sale and charter of war-built vessels, the Commission shall give preference to citizen applicants over noncitizen applicants, and as between citizen applicants to purchase and citizen applicants to charter, shall, so far as practicable and consistent with the policies of this Act, give preference to citizen applicants to purchase. In determining the order of preference between citizen applicants to purchase or between citizen applicants to charter, the Commission shall consider, among other relevant factors, the extent to which losses and requisitions of the applicant's prewar tonnage have been overcome and shall in all cases, in the sale and charter of a war-built vessel, give preference in such sale or charter, as the case may be, to the former owner of such vessel, or to the person for whom the vessel was constructed but to whom delivery thereof was prevented by the United States. In determining the order of preference between non-citizen applicants to purchase, the Commission shall consider the extent to which losses in prewar tonnage of the various member nations of the United Nations, incurred in the interests of the war effort, have been overcome, and the relative effects of such losses upon the national economy of such member nations.

(b) After the cessation of hostilities, operation of vessels in commercial service by the United States, either for its own account or through operating agents under agency agreements, shall, except as specifically authorized by law, be continued only to the extent necessary to effect orderly transfer of vessels to private operation.

EXCHANGE OF VESSELS

SEC. 8. (a) The Commission is authorized to acquire, in exchange for an allowance of a credit on the purchase of any war-built vessel under section 4 or any vessel acquired through exchange under subsection (d) of this section—

- (1) Any vessel owned by a citizen of the United States, other than a vessel purchased under this Act; or
- (2) Any vessel owned by a foreign corporation, if—

(A) the vessel was constructed in the United States, and has, after December 7, 1941, been chartered to, or otherwise taken for use by, the United States; and

(B) the controlling interest in such corporation is, at the time of acquisition of such vessel hereunder, owned by a citizen or citizens of the United States, and has been so owned for a period of at least three years immediately prior to such acquisition; and

(C) such corporation agrees that the war-built vessel purchased with the use of such credit shall be owned by such citizen or citizens and shall be documented under the laws of the United States.

Such allowance shall not be applied upon the cash payment required under section 4. A war-built vessel shall be deemed a "new vessel" for the purpose of section 511 of the Merchant Marine Act, 1936, as amended, and section 510(e) of such Act shall be applicable with respect to vessels exchanged under this section to the same extent as applicable to obsolete vessels exchanged under section 510 of such Act.

(b) (1) If, within ninety days after the publication of the applicable prewar domestic cost in the Federal Register under section 3(c) of this Act, the owner of a vessel eligible

for exchange under subsection (a) makes a firm offer binding for at least ninety days, to transfer the vessel to the Commission in exchange for an allowance of credit provided in subsection (a), the amount of such allowance shall be the fair and reasonable value of the vessel as determined by the Commission under this section. In making such determination the Commission shall consider: (A) The value of the vessel determined in accordance with the standards of valuation established pursuant to Executive Order 9387 (8 F. R. 14105) as of the date of such offer, (B) any liability of the United States for repair and restoration of the vessel, (C) the utility value of the vessel, (D) the effect of this Act upon the market value of such vessel, and (E) the public interest in promoting exchanges of vessels as a means of rehabilitating and modernizing the American merchant marine. In no event shall the amount of such allowance, in case of dry cargo vessels and tankers, exceed (A) (1) if the vessel or vessels tendered in exchange are of equal or greater dead-weight tonnage than the war-built vessel or vessels being acquired, $33\frac{1}{3}$ per centum of the statutory sales price (unadjusted) of the war-built vessel or vessels, or (2) if the vessel or vessels tendered in exchange are of lesser dead-weight tonnage than the war-built vessel or vessels, such proportionate part of $33\frac{1}{3}$ per centum of the statutory sales price (unadjusted) of such war-built vessel or vessels as the dead-weight tonnage of such vessel or vessels, tendered in exchange bear to the dead-weight tonnage of such war-built vessel or vessels, or (B) the liability of the United States in connection with the repair or restoration of such vessel under any charter to which the United States is a party, whichever is the higher. In the case of passenger vessels tendered in exchange, the amount of the allowance shall not exceed the percentages of statutory sales price computed under (A) (1) and (2) above by gross tons instead of dead-weight tons; or such liability for the repair or restoration of such passenger vessel, whichever is the higher. In any case where the vessel tendered in exchange was acquired from the United States, the exchange allowance under this section shall not exceed the price paid the

United States therefor plus the depreciated cost of any improvements thereon. No vessel may be exchanged under this section which pursuant to the terms of any charter with the United States has been restored to condition by the United States, or for the restoring of which pursuant to the terms of such charter a cash allowance has been made to the owner.

(2) If, after such offer is made, and prior to its acceptance, or prior to the acquisition of the vessel, by the Commission, the vessel is lost by reason of causes for which the United States is responsible, then in lieu of paying the owner any amount on account of such loss, the offer shall, for the purposes of subsection (a) and this subsection, be considered as having been accepted and the vessel as having been acquired by the Commission under subsection (a) immediately prior to such loss.

(c) The Commission is also authorized to make available any war-built vessel for transfer in complete or partial settlement of any claim against the United States (1) for just compensation upon requisition for title of any vessel, or (2) for indemnity for the loss of any vessel which was acquired for use by the United States, but only to the extent such vessel is available for sale to the claimant.

(d) In the case of any vessel constructed in the United States after January 1, 1937, which has been taken by the United States for use in any manner, the Commission, if in its opinion the transfer would aid in carrying out the policies of this Act, is authorized to transfer to the owner of such vessel another vessel which is deemed by the Commission to be of comparable type with adjustments for depreciation and difference in design or speed, and to the extent applicable, adjustments with respect to the retained vessel as provided for in section 9, and such other adjustments and terms and conditions, including transfer of mortgage obligations in favor of the United States, binding upon the old vessel, as the Commission may prescribe.

ADJUSTMENT FOR PRIOR SALES TO CITIZENS

Sec. 9: (a) A citizen of the United States who on the date of the enactment of this Act—

(1) owns a vessel which he purchased from the Commission prior to such date, and which was delivered by its builder after December 31, 1940; or

(2) is party to a contract with the Commission to purchase from the Commission a vessel, which has not yet been delivered to him; or

(3) owns a vessel on account of which a construction-differential subsidy was paid, or agreed to be paid, by the Commission under section 504 of the Merchant Marine Act, 1936, as amended, and which was delivered by its builder after December 31, 1940; or

(4) is party to a contract with a shipbuilder for the construction for him of a vessel, which has not yet been delivered to him, and on account of which a construction-differential subsidy was agreed, prior to such date, to be paid by the Commission under section 504 of the Merchant Marine Act, 1936, as amended;

shall, except as hereinafter provided, be entitled to an adjustment in the price of such vessel under this section if he makes application therefor, in such form and manner as the Commission may prescribe, within sixty days after the date of publication of the applicable prewar domestic costs in the Federal Register under section 3 (c) of this Act. No adjustment shall be made under this section in respect of any vessel the contract for the construction of which was made after September 2, 1945, under the provisions of title V (including section 504) or title VII of the Merchant Marine Act, 1936, as amended.

(b) Such adjustment shall be made by crediting the amount thereof against any mortgage indebtedness to the Commission with respect to such vessel (prorated over the

unpaid installments thereof), and by refunding the balance, if any.

(c) The amount of the adjustment under this section shall be the excess of—

(1) the purchase price of such vessel, reduced by an amount representing both normal depreciation at the rate of 5 per centum per annum from the date of delivery to the purchaser to the date of enactment of this Act, and excessive wear and tear by reason of war service, at the same rate and for the same period as that used in computing the statutory sales price under paragraph (2), or in lieu thereof by the amount of any amortization applicable up to such date under section 23(t) of the Internal Revenue Code if such amount is larger; over

(2) the statutory sales price of the vessel as of the date of the enactment of this Act, determined as if the vessel were owned by the Commission, plus, in case a credit as part of the purchase price of the vessel was allowed for an obsolete vessel traded in under section 510 of the Merchant Marine Act, 1936, as amended, the excess, if any, of such credit above the value of such obsolete vessel, determined by the Commission, as of the date of transfer thereof to the Commission, in accord with the standards of valuation in section 8 of this Act.

For the purposes of paragraph (1), the purchase price of a vessel on account of which a construction differential subsidy was paid or agreed to be paid under section 504 of the Merchant Marine Act, 1936, as amended, shall be the net cost of the vessel to the owner.

(d) An adjustment shall be made under this section only if there are included in the adjustment agreement provisions binding upon the citizen applicant and any affiliated interest to the effect that—

(1) the liability of the United States for use (exclusive of service, if any, required under the terms of the charter) of the vessel under any charter party made prior to the date of the enactment of this Act shall be limited to 15 per centum per annum of the adjusted purchase price: Provided, That any payments made to the Commission on the original purchase price of the vessel in excess of $33\frac{1}{3}$ per centum of the adjusted purchase price, and interest actually paid to the Commission on the amount of the price adjustment shall, at the option of the applicant, be credited against the amount of charter hire required to be refunded to the United States pursuant to the provisions of this subsection; and

(2) the liability of the United States under any such charter party for loss of the vessel shall be determined on the basis of the adjusted purchase price, depreciated to the date of loss at the rate of 5 per centum per annum; and

(3) in the event the United States, prior to the termination of the existing national emergency declared by the President on May 27, 1941, uses such vessel pursuant to a taking, or pursuant to a bare-boat charter made, on or after the date of the enactment of this Act, the compensation to be paid to the purchaser, his receivers, and trustees, shall in no event be greater than 15 per centum per annum of the adjusted purchase price; and.

(4) if the applicant for an adjustment under this section has received payment or has a claim for payment on account of the loss or requisition for title of a vessel built subsequent to January 1, 1935, taking place since May 27, 1941, and before the date of enactment of this Act, the payment or claim for payment on account of such loss or title requisition shall be redetermined or settled in an amount not to exceed the adjusted basis of the vessel in the hands of the owner as of the

date of loss or requisition, determined under section 113 (b) of the Internal Revenue Code.

(e) (1) If an adjustment in the purchase price of a vessel is made under this section, the income and excess-profits taxes of the vessel owner under the Internal Revenue Code for the taxable year within which the delivery of the vessel was made to the purchaser and for subsequent taxable years, shall be redetermined. For such purposes of redetermination, the vessel shall be considered as having been acquired at the adjusted purchase price, and the income and deductions attributable to such vessel shall be determined as if this section had been in effect on the date of such delivery.

(2) At the election of the taxpayer, any overpayment of tax resulting from the recomputation required under this subsection for any taxable year may, under rules and regulations prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, in lieu of being credited or refunded, be applied as provided in subsection (b) of this section.

(f) Section 506 of the Merchant Marine Act, 1936, as amended, shall not apply with respect to (1) any vessel which is eligible for an adjustment under this section, or (2) any vessel described in clause (1), (2), (3), or (4) of subsection (a) of this section, the contract for the construction of which is made after September 2, 1945, and prior to the date of enactment of this Act.

LIMITATION ON ELIGIBILITY FOR BENEFITS OF ACT

SEC. 10. No person shall be eligible to purchase or charter a war-built vessel under this Act, or to receive an adjustment under section 9, unless such person makes an agreement with the Commission binding upon such person and any affiliated interest to the effect that the liability of the United States under any charter party or taking for use, made or effected prior to the date of the enactment of

this Act, for the loss, on or after such date of enactment and prior to September 3, 1947, of any vessel owned by such person and under charter to the United States (excluding a vessel with respect to which an application under section 9 can be made) shall be limited to an amount equal to just compensation as of the date of said loss, determined pursuant to existing law or such amount as may be mutually agreed upon subsequent to the date of the enactment of this Act as just compensation under the provisions of existing law.

NATIONAL DEFENSE RESERVE FLEET

SEC. 11. (a) The Commission shall place in a national defense reserve (1) such vessels owned by it as, after consultation with the Secretary of War and the Secretary of the Navy, it deems should be retained for the national defense, and (2) all vessels owned by it on December 31, 1947, for the sale of which a contract has not been made by that time, except those determined by the Commission to be of insufficient value for commercial and national defense purposes to warrant their maintenance and preservation, and except those vessels the contracts for the construction of which are made after September 2, 1945, under the provisions of the Merchant Marine Act, 1936, as amended. A vessel under charter on December 31, 1947 shall not be placed in the reserve until the termination of such charter. Unless otherwise provided for by law, all vessels placed in such reserve shall be preserved and maintained by the Commission for the purpose of national defense. A vessel placed in such reserve shall in no case be used for commercial operation, except that any such vessel may be used during any period in which vessels may be requisitioned under section 902 of the Merchant Marine Act, 1936, as amended.

(b) Any war-built vessel may be made available by the Commission to any State maintaining a marine school or nautical branch in accordance with the Act of July 29, 1941 (Public Law 191, Seventy-seventh Congress; 55 Stat. 607).

REACQUISITION BY UNITED STATES

SEC. 12. There shall be included in every contract for the sale of a vessel under this Act provisions binding on, and running with the title of, the vessel to the effect that in the event the United States, prior to the termination of the existing national emergency declared by the President on May 27, 1941, or prior to the expiration of five years from the termination of such emergency, charters or takes such vessel for bare-boat use while owned by a citizen of the United States, the charter hire paid to the owner of the vessel, shall be at a rate in no event greater than 15 per centum per annum of the adjusted basis of the vessel in the hands of such owner as of the date of such charter or taking, determined under section 113(b) of the Internal Revenue Code, and that in the event, prior to the termination of such emergency or prior to the expiration of such five years, such vessel, while owned by a citizen of the United States, is repurchased or requisitioned for title by the United States, or is lost by reason of causes for which the United States is responsible, the compensation paid to the owner of the vessel shall not exceed the adjusted basis of the vessel in the hands of such person as of the date of requisition or loss, determined under section 113(b) of the Internal Revenue Code.

GENERAL PROVISIONS

SEC. 13. (a) The Commission is authorized to reconvert or restore for normal operation in commercial services, including removal of national defense or war-service features, any vessel authorized to be sold or chartered under this Act. The Commission is authorized to make such replacements, alterations, or modifications with respect to any vessel authorized to be sold or chartered under this Act, and to install therein such special features, as may be necessary or advisable to make such vessel suitable for commercial operation on trade routes or services, or comparable as to commercial utility to other such vessels of the same general type.

(b) The provisions of section 202 of the War Mobilization and Reconversion Act of 1944 shall not apply to contracts of the Commission for or relating to construction of ships.

(c) Notwithstanding the provisions of section 27 of the Merchant Marine Act, 1920, as amended (U. S. C., title 46, sec. 883), no vessel sold or chartered by the Commission under this Act to a citizen of the United States shall be prohibited from engaging in the coastwise trade of the United States while owned by or chartered to such citizen or citizen successors in interest merely because it was under foreign registry on or after May 27, 1941, and prior to its sale or charter under this Act to such citizen, if it is otherwise entitled under the laws of the United States to engage in such trade.

(d) All moneys received by the Commission under this Act shall be deposited in the Treasury to the credit of miscellaneous receipts. The provisions of sections 201(d), 204(b), 207, 209(a), and 905(c) of the Merchant Marine Act, 1936, as amended, shall apply to all activities and functions which the Commission is authorized to perform under this Act.

REPORTS

SEC. 14. The Commission shall on July 1, 1946, and every six months thereafter, make a report to Congress with respect to all activities and transactions under this Act which have not been covered by any previous report.

TERMINATION DATE

SEC. 15. No contract of sale or of charter shall be made under this Act after December 31, 1947.

(9)

MERCHANT SHIP SALES ACT OF 1946

CHAPTER 82—PUBLIC LAW 321

[H. R. 3603]

An Act to provide for the sale of surplus war-built vessels, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That:

This Act may be cited as the "Merchant Ship Sales Act of 1946".

DECLARATION OF POLICY

SEC. 2. (a) It is necessary for the national security and development and maintenance of the domestic and the export and import foreign commerce of the United States that the United States have an efficient and adequate American-owned merchant marine (1) sufficient to carry its domestic water-borne commerce and a substantial portion of its water-borne export and import foreign commerce and to provide shipping service on all routes essential for maintaining the flow of such domestic and foreign water-borne commerce at all times; (2) capable of serving as a naval and military auxiliary in time of war or national emergency; (3) owned and operated under the United States flag by citizens of the United States; (4) composed of the best-equipped, safest and most suitable types of vessels, constructed in the United States and manned with a trained and efficient citizen personnel; and (5) supplemented by efficient American-owned facilities for shipbuilding and ship repair, marine insurance, and other auxiliary services.

(b) It is hereby declared to be the policy of this Act to foster the development and encourage the maintenance of such a merchant marine.

DEFINITIONS

SEC. 3. As used in this Act the term—

(a) "Commission" means the United States Maritime Commission.

(b) "War-built vessel" means an oceangoing vessel of one thousand five hundred gross tons or more, owned by the United States and suitable for commercial use—

(1) which was constructed or contracted for by or for the account of the United States during the period, beginning January 1, 1941 and ending with September 2, 1945; or

(2) which, having been constructed during the period beginning September 3, 1939, and ending with September 2, 1945, was acquired by the United States during such period.

(c) "Prewar domestic cost", as applied to any type of vessel, means the amount determined by the Commission, and published by the Commission in the Federal Register, to be the amount for which a standard vessel of such type could have been constructed (without its national defense features) in the United States under normal conditions relating to labor, materials, and other elements of cost, obtaining on or about January 1, 1941. In no case shall the prewar domestic cost of any type of vessel be considered to be greater than 80 per centum of the domestic war cost of vessels of the same type.

(d) "Statutory sales price", as applied to a particular vessel, means, in the case of a dry-cargo vessel, an amount equal to 50 per centum of the prewar domestic cost of that type of vessel, and in the case of a tanker, such term means an amount equal to 87½ per centum of the prewar domestic cost of a tanker of that type, such amount in each case being adjusted as follows:

(1) If the Commission is of the opinion that the vessel is not in class, there shall be subtracted the

amount estimated by the Commission as the cost of putting the vessel in class.

(2) If the Commission is of the opinion that the vessel lacks desirable features which are incorporated in the standard vessel used for the purpose of determining prewar domestic cost, and that the statutory sales price (unadjusted) would be lower if the standard vessel had also lacked such features, there shall be subtracted the amount estimated by the Commission as the amount of such resulting difference in statutory sales price.

(3) If the Commission is of the opinion that the vessel contains desirable features which are not incorporated in the standard vessel used for the purpose of determining prewar domestic cost, and that the statutory sales price (unadjusted) would be higher if the standard vessel had also contained such features, there shall be added the amount estimated by the Commission as the amount of such resulting difference in statutory sales price.

(4) There shall be subtracted, as representing normal depreciation, an amount computed by applying to the statutory sales price (determined without regard to this paragraph) the rate of 5 per centum per annum for the period beginning with the date of the original delivery of the vessel by its builder and ending with the date of sale or charter to the applicant in question, and there shall also be subtracted an amount computed by applying to the statutory sales price (determined without regard to this paragraph) such rate not in excess of 3 per centum per annum in the case of a vessel other than a tanker, and not in excess of 4 per centum per annum in the case of a tanker, for such period or periods of war service as the Commission determines will make reasonable allowance for excessive wear and tear by reason of war service which cannot be or has not been otherwise compensated for under this subsection.

No adjustment, except in respect of passenger vessels constructed before January 1, 1941, shall be made under this Act which will result in a statutory sales price which (1) in the case of dry-cargo vessels (except Liberty type vessels) will be less than 35 per centum of the domestic war cost of vessels of the same type, (2) in the case of any Liberty type vessel will be less than $31\frac{1}{2}$ per centum of the domestic war cost of vessels of such type, or (3) in the case of a tanker will be less than 50 per centum of the domestic war cost of tankers of the same type. For the purposes of this Act, except section 5, all Liberty vessels shall be considered to be vessels of one and the same type.

(c) "Domestic war cost" as applied to any type of vessel means the average construction cost (without national defense features) as determined by the Commission, of vessels of such type delivered during the calendar year 1944, except in case of any type of vessel the principal deliveries of which were made after the calendar year 1944, there shall be used in lieu of such year 1944 such period of not less than six consecutive calendar months as the Commission shall find to be most representative of war production costs of such type.

(f) "Cessation of hostilities" means the date proclaimed by the President as the date of the cessation of hostilities in the present war, or the date so specified in a concurrent resolution of the two Houses of the Congress, whichever is the earlier.

(g) "Citizen of the United States" includes a corporation, partnership, or association only if it is a citizen of the United States within the meaning of section 2 of the Shipping Act of 1916, as amended. The term "affiliated interest" as used in sections 9 and 10 of this Act includes any person affiliated or associated with a citizen applicant for benefits under this Act who the Commission, pursuant to rules and regulations prescribed hereunder, determines should be so included in order to carry out the policy and purposes of this Act.

SALES OF WAR-BUILT VESSELS TO CITIZENS

SEC. 4. (a) Any citizen of the United States may make application to the Commission to purchase a war-built vessel, under the jurisdiction and control of the Commission, at the statutory sales price. If the Commission determines that the applicant possesses the ability, experience, financial resources, and other qualifications, necessary to enable him to operate and maintain the vessel under normal competitive conditions, and that such sale will aid in carrying out the policies of this Act, the Commission shall sell such vessel to the applicant at the statutory sales price.

(b) At the time of sale, the purchaser shall pay to the Commission at least 25 per centum of the statutory sales price. The balance of the statutory sales price shall be payable in not more than twenty equal annual installments, with interest on the portion of the statutory sales price remaining unpaid, at the rate of $3\frac{1}{2}$ per centum per annum, or shall be payable under such other amortization provisions which permit the purchaser to accelerate payment of the unpaid balance as the Commission deems satisfactory. The obligation of the purchaser with respect to payment of such unpaid balance with interest shall be secured by a preferred mortgage on the vessel sold.

(c) The contract of sale, and the mortgage given to secure the payment of the unpaid balance of the purchase price, shall not restrict the lawful or proper use or operation of the vessel.

CHARTER OF WAR-BUILT VESSELS TO CITIZENS

SEC. 5. (a) Any citizen of the United States and, until July 4, 1946, any citizen of the Commonwealth of the Philippines, may make application to the Commission to charter a war-built dry-cargo vessel, under the jurisdiction and control of the Commission, for bare-boat use. The Commission may, in its discretion, either reject or approve the application, but shall not so approve unless in its opinion

the chartering of such vessel to the applicant would be consistent with the policies of this Act. No vessel shall be chartered under this section until sixty days after publication of the applicable prewar domestic cost in the Federal Register under subsection 3 (c) of this Act.

(b) The charter hire for any vessel chartered under the provisions of this section shall be fixed by the Commission at such rate as the Commission determines to be consistent with the policies of this Act, but, except upon the affirmative vote of not less than four members of the Commission, such rate shall not be less than 15 per centum per annum of the statutory sales price (computed as of the date of charter). Except in the case of vessels having passenger accommodations for not less than eighty passengers, rates of charter hire fixed by the Commission on any war-built vessel which differ from the rate specified in this subsection shall not be less than the prevailing world market charter rates for similar vessels for similar use as determined by the Commission.

(c) The provisions of sections 708, 709, 710, 712, and 713, of the Merchant Marine Act, 1936, as amended, shall be applicable to charters made under this section.

SALE OF WAR-BUILT VESSELS TO PERSONS NOT CITIZENS OF THE UNITED STATES

SEC. 6. (a) Any person not a citizen of the United States may make application to the Commission to purchase a war-built vessel (other than a P-2 type or other passenger type and other than a Liberty type collier or tanker), under the jurisdiction and control of the Commission. If the Commission determines—

(1) that the applicant has the financial resources, ability, and experience necessary to enable him to fulfill all obligations with respect to payment of any deferred portion of the purchase price, and that sale of the vessel to him would not be inconsistent with any policy of the United States in permitting foreign sales under section 9 of the Shipping Act, 1916, as amended; and

(2) after consultation with the Secretary of the Navy, that such vessel is not necessary to the defense of the United States; and

(3) that such vessel is not necessary to the promotion and maintenance of an American merchant marine described in section 2; and

(4) that for a reasonable period of time, which in the case of tankers and "C" type vessels shall not end before ninety days after publication of the applicable prewar domestic cost in the Federal Register under subsection 3 (c) of this Act, such vessel has been available for sale at the statutory sales price to citizens of the United States or for charter under section 5 to citizens of the United States, and that no responsible offer has been made by a citizen of the United States to purchase or charter such vessel;

then the Commission is authorized to approve the application and sell such vessel to the applicant at not less than the statutory sales price. In case of application submitted by a citizen of the Commonwealth of the Philippines, paragraph (4) of this subsection shall not apply. Notwithstanding paragraph (4) of this subsection, not to exceed ten "C" type vessels, except C-3's, may be sold to non-citizens at any time after such date of publication at not less than the statutory sales price.

(b) Notwithstanding any other provision of law, no war-built vessel shall be sold to any person not a citizen of the United States, except in accordance with subsection (a), or upon terms or conditions more favorable than those at which such war-built vessel is offered to a citizen of the United States, but where the vessel so sold is being transferred to foreign register and flag, the mortgage securing the unpaid balance of the purchase price and interest thereon shall contain provisions according to such mortgage the priorities over other liens and encumbrances accorded such mortgages on merchant vessels under the laws of such registry and flag.

ORDER OF PREFERENCES

SEC. 7. (a) In exercising its powers under this Act and under other provisions of law with respect to the sale and charter of war-built vessels, the Commission shall give preference to citizen applicants over noncitizen applicants, and as between citizen applicants to purchase and citizen applicants to charter, shall, so far as practicable and consistent with the policies of this Act, give preference to citizen applicants to purchase. In determining the order of preference between citizen applicants to purchase or between citizen applicants to charter, the Commission shall consider, among other relevant factors, the extent to which losses and requisitions of the applicant's prewar tonnage have been overcome and shall in all cases, in the sale and charter of a war-built vessel, give preference in such sale or charter, as the case may be, to the former owner of such vessel, or to the person for whom the vessel was constructed but to whom delivery thereof was prevented by the United States. In determining the order of preference between noncitizen applicants to purchase, the Commission shall give preference to citizens of the Commonwealth of the Philippines, and in determining the order of preference between other noncitizen applicants to purchase shall consider the extent to which losses in prewar tonnage of the various member nations of the United Nations, incurred in the interests of the war effort, have been overcome, and the relative effects of such losses upon the national economy of such member nations.

(b) After the cessation of hostilities, operation of vessels in commercial service by the United States, either for its own account or through operating agents under agency agreements, shall, except as to the Panama Railroad Company and other services specifically authorized by law, be continued only to the extent necessary to effect orderly transfer of vessels to private operation.

EXCHANGE OF VESSELS

SEC. 8. (a) The Commission is authorized to acquire, in exchange for an allowance of a credit on the purchase of any war-built vessel under section 4 or any vessel acquired through exchange under subsection (d) of this section—

(1) Any vessel owned by a citizen of the United States, other than a vessel purchased under this Act; or

(2) Any vessel owned by a foreign corporation, if—

(A) the vessel was constructed in the United States, and has, after December 7, 1941, been chartered to, or otherwise taken for use by, the United States; and

(B) the controlling interest in such corporation is, at the time of acquisition of such vessel hereunder, owned by a citizen or citizens of the United States, and has been so owned for a period of at least three years immediately prior to such acquisition; and

(C) such corporation agrees that the war-built vessel purchased with the use of such credit shall be owned by such citizen or citizens and shall be documented under the laws of the United States.

Such allowance shall not be applied upon the cash payment required under section 4. A war-built vessel shall be deemed a "new vessel" for the purpose of section 511 of the Merchant Marine Act, 1936, as amended, and section 510 (e) of such Act shall be applicable with respect to vessels exchanged under this section to the same extent as applicable to obsolete vessels exchanged under section 510 of such Act.

(b) (1) If, prior to December 31, 1946, the owner of a vessel eligible for exchange under subsection (a) makes a firm offer binding for at least ninety days, to transfer the vessel to the Commission in exchange for an allowance of credit provided in subsection (a), the amount of such allowance shall be the fair and reasonable value of the vessel as

determined by the Commission under this section. In making such determination the Commission shall consider: (A) The value of the vessel determined in accordance with the standards of valuation established pursuant to Executive Order 9387 (8 F. R. 14105) as of the date of such offer, (B) any liability of the United States for repair and restoration of the vessel, (C) the utility value of the vessel, (D) the effect of this Act upon the market value of such vessel, and (E) the public interest in promoting exchanges of vessels as a means of rehabilitating and modernizing the American merchant marine. In no event shall the amount of such allowance, in case of dry cargo vessels and tankers, exceed (A) (1) if the vessel or vessels tendered in exchange are of equal or greater dead weight tonnage than the war-built vessel or vessels being acquired, $33\frac{1}{3}$ per centum of the statutory sales price (unadjusted) of the war-built vessel or vessels, or (2) if the vessel or vessels tendered in exchange are of lesser dead-weight tonnage than the war-built vessel or vessels, such proportionate part of $33\frac{1}{3}$ per centum of the statutory sales price (unadjusted) of such war-built vessel or vessels as the dead-weight tonnage of such vessel or vessels tendered in exchange bear to the dead-weight tonnage of such war-built vessel or vessels, or (B) the liability of the United States in connection with the repair or restoration of such vessel under any charter to which the United States is a party, whichever is higher. In the case of passenger vessels tendered in exchange, the amount of the allowance shall not exceed the percentages of statutory sales price computed under (A) (1) and (2) above by gross tons instead of dead-weight tons, or such liability for the repair or restoration of such passenger vessel, whichever is the higher. In any case where the vessel tendered in exchange was acquired from the United States, the exchange allowance under this section shall not exceed the price paid the United States therefor plus the depreciated cost of any improvements thereon. In the case of any vessel tendered in exchange which has been restored to condition by the United States for the purpose of redelivering such vessel to its owner in compliance with the charter of such vessel with

the United States, or where, for such restoration a cash allowance has been made to the owner, there shall be deducted from the amount of the allowance of credit for such vessel determined by the Commission under this section, an amount equal to the liability of the United States for such restoration or such cash allowance made to the owner.

(2) If, after such offer is made, and prior to its acceptance, or prior to the acquisition of the vessel, by the Commission, the vessel is lost by reason of causes for which the United States is responsible, then in lieu of paying the owner any amount on account of such loss, the offer shall, for the purposes of subsection (a) and this subsection, be considered as having been accepted and the vessel as having been acquired by the Commission under subsection (a) immediately prior to such loss.

(c) The Commission is also authorized to make available any war-built vessel for transfer in complete or partial settlement of any claim against the United States (1) for just compensation upon requisition for title of any vessel, or (2) for indemnity for the loss of any vessel which was acquired for use by the United States, but only to the extent such vessel is available for sale to the claimant.

(d) In the case of any vessel constructed in the United States after January 1, 1937, which has been taken by the United States for use in any manner, the Commission, if in its opinion the transfer would aid in carrying out the policies of this Act, is authorized to transfer to the owner of such vessel another vessel which is deemed by the Commission to be of comparable type with adjustments for depreciation and difference in design or speed, and to the extent applicable, adjustments with respect to the retained vessel as provided for in section 9, and such other adjustments and terms and conditions, including transfer of mortgage obligations in favor of the United States binding upon the old vessel, as the Commission may prescribe.

ADJUSTMENT FOR PRIOR SALES TO CITIZENS

SEC. 9. (a) A citizen of the United States who on the date of the enactment of this Act—

(1) owns a vessel which he purchased from the Commission prior to such date, and which was delivered by its builder after December 31, 1940; or

(2) is party to a contract with the Commission to purchase from the Commission a vessel, which has not yet been delivered to him; or

(3) owns a vessel on account of which a construction-differential subsidy was paid, or agreed to be paid, by the Commission under section 504 of the Merchant Marine Act, 1936, as amended, and which was delivered by its builder after December 31, 1940; or

(4) is party to a contract with a shipbuilder for the construction for him of a vessel, which has not yet been delivered to him, and on account of which a construction-differential subsidy was agreed, prior to such date, to be paid by the Commission under section 504 of the Merchant Marine Act, 1936, as amended;

shall, except as hereinafter provided, be entitled to an adjustment in the price of such vessel under this section if he makes application therefor, in such form and manner as the Commission may prescribe, within sixty days after the date of publication of the applicable prewar domestic costs in the Federal Register under section 3 (c) of this Act. No adjustment shall be made under this section in respect of any vessel the contract for the construction of which was made after September 2, 1945, under the provisions of title V (including section 504) or title VII of the Merchant Marine Act, 1936, as amended.

(b) Such adjustment shall be made, as hereinafter provided, by treating the vessel as if it were being sold to the applicant on the date of the enactment of this Act, and not before that time. The amount of such adjustment shall be determined as follows:

(1) The Commission shall credit the applicant with the excess of the cash payments made upon the original purchase price of the vessel over 25 per centum of the statutory sales price of the vessel as of such date of enactment. If such payment was less than 25 per centum of the statutory sales price of the vessel, the applicant shall pay the difference to the Commission.

(2) The applicant's indebtedness under any mortgage to the United States with respect to the vessel shall be adjusted.

(3) The adjusted mortgage indebtedness shall be in an amount equal to the excess of the statutory sales price of the vessel as of the date of the enactment of this Act over the sum of the cash payment retained by the United States under paragraph (1) plus the readjusted trade-in allowance (determined under paragraph (7)) with respect to any vessel exchanged by the applicant on the original purchase. The adjusted mortgage indebtedness shall be payable in equal annual installments thereafter during the remaining life of such mortgage with interest on the portion of the statutory sales price remaining unpaid at the rate of $3\frac{1}{2}$ per centum per annum.

(4) The Commission shall credit the applicant with the excess, if any, of the sum of the cash payments made by the applicant upon the original purchase price of the vessel plus the readjusted trade-in allowance (determined under paragraph (7)) over the statutory sales price of the vessel as of the date of the enactment of this Act to the extent not credited under paragraph (1).

(5) The Commission shall also credit the applicant with an amount equal to interest at the rate of $3\frac{1}{2}$ per centum per annum (for the period beginning with the date of the original delivery of the vessel to the applicant and ending with the date of the enactment of this Act) on the excess of the original purchase price of the vessel over the amount of any allowance allowed by the

Commission on the exchange of any vessel on such purchase; the amount of such credit first being reduced by any interest on the original mortgage indebtedness accrued up to such date of enactment and unpaid. Interest so accrued and unpaid shall be canceled.

(6) The applicant shall credit the Commission with all amounts paid by the United States to him as charter hire for use of the vessel (exclusive of service, if any, required under the terms of the charter) under any charter party made prior to the date of the enactment of this Act, and any charter hire for such use accrued up to such date of enactment and unpaid shall be canceled; and the Commission shall credit the applicant with the amount that would have been paid by the United States to the applicant as charter hire for bareboat use of vessels exchanged by the applicant on the original purchase (for the period beginning with date on which the vessels so exchanged were delivered to the Commission and ending with the date of the enactment of this Act).

(7) The allowance made to the applicant on any vessel exchanged by him on the original purchase shall be readjusted so as to limit such allowance to the amount provided for under section 8.

(8) There shall be subtracted from the sum of the credits in favor of the Commission under the foregoing provisions of this subsection the amount of any overpayments of Federal taxes by the applicant resulting from the application of subsection (c) (1), and there shall be subtracted from the sum of the credits in favor of the applicant under the foregoing provisions of this subsection the amount of any deficiencies in Federal taxes of the applicant resulting from the application of subsection (c) (1). If, after making such subtractions, the sum of the credits in favor of the applicant exceeds the sum of the credits in favor of the Commission, such excess shall be paid by the Commission to the applicant. If, after making such subtractions, the sum of the

credits in favor of the Commission exceeds the sum of the credits in favor of the applicant, such excess shall be paid by the applicant to the Commission. Upon such payment by the Commission or the applicant, such overpayments shall be treated as having been refunded and such deficiencies as having been paid.

For the purposes of this subsection, the purchase price of a vessel on account of which a construction-differential subsidy was paid or agreed to be paid under section 504 of the Merchant Marine Act, 1936, as amended, shall be the net cost of the vessel to the owner.

(c) An adjustment shall be made under this section only if the applicant enters into an agreement with the Commission binding upon the citizen applicant and any affiliated interest to the effect that—

(1) depreciation and amortization allowed or allowable with respect to the vessel up to the date of the enactment of this Act for Federal tax purposes shall be treated as not having been allowable; amounts credited to the Commission under subsection (b) (6) shall be treated for Federal tax purposes as not having been received or accrued as income; amounts credited to the applicant under subsection (b) (5) and (6) shall be treated for Federal tax purposes as having been received and accrued as income in the taxable year in which falls the date of the enactment of this Act;

(2) the liability of the United States for use (exclusive of service, if any, required under the terms of the charter) of the vessel on or after the date of the enactment of this Act under any charter party shall not exceed 15 per centum per annum of the statutory sales price of the vessel as of such date of enactment; and the liability of the United States under any such charter party for loss of the vessel shall be determined on the basis of the statutory sales price as of the date of the enactment of this Act, depreciated to the date of loss at the rate of 5 per centum per annum; and

(3) in the event the United States, prior to the termination of the existing national emergency declared by the President on May 27, 1941, uses such vessel pursuant to a taking, or pursuant to a bare-boat charter made, on or after the date of the enactment of this Act, the compensation to be paid to the purchaser, his receivers, and trustees, shall in no event be greater than 15 per centum per annum of the statutory sales price as of such date.

(d) Section 506 of the Merchant Marine Act, 1936, as amended, shall not apply with respect to (1) any vessel which is eligible for an adjustment under this section, or (2) any vessel described in clause (1), (2), (3), or (4) of subsection (a) of this section, the contract for the construction of which is made after September 2, 1945, and prior to the date of enactment of this Act.

LIMITATION ON ELIGIBILITY FOR BENEFITS OF ACT

SEC. 10. No person shall be eligible to purchase or charter a war-built vessel under this Act, or to receive an adjustment under section 9, unless such person makes an agreement with the Commission binding upon such person and any affiliated interest to the effect that the liability of the United States under any charter party or taking for use, made or effected prior to the date of the enactment of this Act, for the loss, on or after such date of enactment and prior to September 3, 1947, of any vessel owned by such person and under charter to the United States (excluding a vessel with respect to which an adjustment is made under section 9) shall be limited to an amount equal to just compensation as of the date of said loss, determined pursuant to existing law, or such amount as may be mutually agreed upon subsequent to the date of the enactment of this Act as just compensation under the provisions of existing law.

NATIONAL DEFENSE RESERVE FLEET

SEC. 11. (a) The Commission shall place in a national defense reserve (1) such vessels owned by it as, after consultation with the Secretary of War and the Secretary of the Navy, it deems should be retained for the national defense, and (2) all vessels owned by it on December 31, 1947, for the sale of which a contract has not been made by that time, except those determined by the Commission to be of insufficient value for commercial and national defense purposes to warrant their maintenance and preservation, and except those vessels, the contracts for the construction of which are made after September 2, 1945, under the provisions of the Merchant Marine Act, 1936, as amended. A vessel under charter on December 31, 1947, shall not be placed in the reserve until the termination of such charter. Unless otherwise provided for by law, all vessels placed in such reserve shall be preserved and maintained by the Commission for the purpose of national defense. A vessel placed in such reserve shall in no case be used for commercial operation, except that any such vessel may be used during any period in which vessels may be requisitioned under section 902 of the Merchant Marine Act, 1936, as amended.

(b) Any war-built vessel may be made available by the Commission to any State maintaining a marine school or nautical branch in accordance with the Act of July 29, 1941 (Public Law 191, Seventy-seventh Congress; 55 Stat. 607).

GENERAL PROVISIONS

SEC. 12. (a) The Commission is authorized to reconvert or restore for normal operation in commercial services, including removal of national defense or war-service features, any vessel authorized to be sold or chartered under this Act. The Commission is authorized to make such replacements, alterations, or modifications with respect to any vessel authorized to be sold or chartered under this Act, and to install therein such special features, as may be necessary or advisable to make such vessel suitable for

commercial operation on trade routes or services or comparable as to commercial utility to other such vessels of the same general type.

(b) The provisions of section 202 of the War Mobilization and Reconversion Act of 1944 shall not apply to contracts of the Commission for or relating to construction of ships.

(c) Notwithstanding the provisions of section 27 of the Merchant Marine Act, 1920, as amended (U. S. C., title 46, sec. 883), no vessel sold or chartered by the Commission under this Act to a citizen of the United States shall be prohibited from engaging in the coastwise trade of the United States while owned by or chartered to such citizen or citizen successors in interest merely because it was under foreign registry on or after May 27, 1941, and prior to its sale or charter under this Act to such citizen, if it is otherwise entitled under the laws of the United States to engage in such trade.

(d) All moneys received by the Commission under this Act shall be deposited in the Treasury to the credit of miscellaneous receipts. The provisions of sections 201 (d), 204 (b), 207, 209 (a), and 905 (c) of the Merchant Marine Act, 1936, as amended, shall apply to all activities and functions which the Commission is authorized to perform under this Act.

REPORTS

SEC. 13. The Commission shall on July 1, 1946, and every three months thereafter, make a report to Congress with respect to all activities or transactions under this Act which have not been covered by any previous such report.

TERMINATION DATE

SEC. 14. No contract of sale or of charter shall be made under this Act after December 31, 1947.

APPENDIX C.

Comparison of Section 9 Provisions
in Various Acts.

H. R. 3603
as recommended by
House Committee
(Original H. R. 3603)

("Qualification Section")

(a) A citizen of the United States who on the date of the enactment of this Act—

(1) owns a vessel which he purchased from the Commission prior to such date, and which was delivered by its builder after December 31, 1940; or

(2) is party to a contract with the Commission to purchase from the Commission a vessel, which has not yet been delivered to him; or

(3) owns a vessel on account of which a construction-differential subsidy was paid, or agreed to be paid, by the Commission under section 504 of the Merchant Marine Act, 1936, as amended, and which was delivered by its builder after December 31, 1940; or

(4) is party to a contract with a shipbuilder for the construction for him of a vessel, which has not yet been delivered to him, and on account of which a construction-differential subsidy was agreed, prior to such date, to be paid by the Commission under section 504 of the Merchant Marine Act, 1936, as amended;

H. R. 3603
as adopted by
House of Representatives
(House bill)

(a) A citizen of the United States who on the date of the enactment of this Act—

(1) owns a vessel which he purchased from the Commission prior to such date, and which was delivered by its builder after December 31, 1940; or

(2) is party to a contract with the Commission to purchase from the Commission a vessel, which has not yet been delivered to him; or

(3) owns a vessel on account of which a construction-differential subsidy was paid, or agreed to be paid, by the Commission under section 504 of the Merchant Marine Act, 1936, as amended, and which was delivered by its builder after December 31, 1940; or

(4) is party to a contract with a shipbuilder for the construction for him of a vessel, which has not yet been delivered to him, and on account of which a construction-differential subsidy was agreed, prior to such date, to be paid by the Commission under section 504 of the Merchant Marine Act, 1936, as amended;

H. R. 3603
as amended by Senate
(Senate amendment)

(a) A citizen of the United States who on the date of the enactment of this Act—

(1) owns a vessel which he purchased from the Commission prior to such date, and which was delivered by its builder after December 31, 1940; or

(2) is party to a contract with the Commission to purchase from the Commission a vessel, which has not yet been delivered to him; or

(3) owns a vessel on account of which a construction-differential subsidy was paid, or agreed to be paid, by the Commission under section 504 of the Merchant Marine Act, 1936, as amended, and which was delivered by its builder after December 31, 1940; or

(4) is party to a contract with a shipbuilder for the construction for him of a vessel, which has not yet been delivered to him, and on account of which a construction-differential subsidy was agreed, prior to such date, to be paid by the Commission under section 504 of the Merchant Marine Act, 1936, as amended;

Merchant Ship Sales Act
of 1946
(H. R. 3603 as adopted)

(a) A citizen of the United States who on the date of the enactment of this Act—

(1) owns a vessel which he purchased from the Commission prior to such date, and which was delivered by its builder after December 31, 1940; or

(2) is party to a contract with the Commission to purchase from the Commission a vessel, which has not yet been delivered to him; or

(3) owns a vessel on account of which a construction-differential subsidy was paid, or agreed to be paid, by the Commission under section 504 of the Merchant Marine Act, 1936, as amended, and which was delivered by its builder after December 31, 1940; or

(4) is party to a contract with a shipbuilder for the construction for him of a vessel, which has not yet been delivered to him, and on account of which a construction-differential subsidy was agreed, prior to such date, to be paid by the Commission under section 504 of the Merchant Marine Act, 1936, as amended;

H. R. 3603
as recommended by
House Committee

shall be entitled to an adjustment in the price of such vessel under this section if he makes application therefor, in such form and manner as the Commission may prescribe, within sixty days after the date of the enactment of this Act.

(b) Such adjustment shall be made by crediting the amount thereof against any mortgage indebtedness to the Commission with respect to such vessel (prorated over the unpaid installments thereof), and by refunding the balance, if any.

H. R. 3603
as adopted by
House of Representatives

shall, except as hereinafter provided, be entitled to an adjustment in the price of such vessel under this section if he makes application therefor, in such form and manner as the Commission may prescribe, within sixty days after the date of the enactment of this Act. No adjustment shall be made under this section in respect of any vessel the contract for the construction of which was made after June 30, 1945, under the provisions of title V (including sec. 504) or title VII of the Merchant Marine Act, 1936, as amended.

(no similar provision)

H. R. 3603
as amended by Senate

shall, except as hereinafter provided, be entitled to an adjustment in the price of such vessel under this section if he makes application therefor, in such form and manner as the Commission may prescribe, within sixty days after the date of publication of the applicable prewar domestic costs in the Federal Register under section 3 (c) of this Act. No adjustment shall be made under this section in respect of any vessel the contract for the construction of which was made after September 2, 1945, under the provisions of title V (including section 504) or title VII of the Merchant Marine Act, 1936, as amended.

(b) Such adjustment shall be made by crediting the amount thereof against any mortgage indebtedness to the Commission with respect to such vessel (prorated over the unpaid installments thereof), and by refunding the balance, if any.

Merchant Ship Sales Act
of 1946

shall, except as hereinafter provided, be entitled to an adjustment in the price of such vessel under this section if he makes application therefor, in such form and manner as the Commission may prescribe, within sixty days after the date of publication of the applicable prewar domestic costs in the Federal Register under section 3 (c) of this Act. No adjustment shall be made under this section in respect of any vessel the contract for the construction of which was made after September 2, 1945, under the provisions of title V (including section 504) or title VII of the Merchant Marine Act, 1936, as amended.

(no similar provision)

H. R. 3603
as recommended by
House Committee

("Adjustment Section")

(c) The amount of the adjustment under this section shall be the excess of—

(1) the purchase price of such vessel, reduced by an amount representing both normal depreciation, and excessive wear and tear by reason of war service, at the same rate and for the same period as that used in computing the statutory sales price under paragraph (2), or in lieu thereof by the amount of any amortization applicable up to such date under section 23 (t) of the Internal Revenue Code if such amount is larger; over

(2) the statutory sales price of the vessel as of the date of the enactment of this Act, determined as if the vessel were owned by the Commission.

H. R. 3603
as adopted by
House of Representatives

(b) Such adjustment shall be made, as hereinafter provided, by treating the vessel as if it were being sold to the applicant on the date of the enactment of this Act, and not before that time. The amount of such adjustment shall be determined as follows:

(1) The Commission shall credit the applicant with the excess of the cash payments made upon the original purchase price of the vessel over 25 per centum of the statutory sales price of the vessel as of such date of enactment. If such payment was less than 25 per centum of the statutory sales price of the vessel, the applicant shall pay the difference to the Commission.

(2) The mortgage indebtedness of the applicant with respect to the vessel shall be canceled, and a new mortgage indebtedness, payable in not more than twenty equal annual installments, with interest on the portion of the statutory sales price remaining unpaid, at the rate of 3½ per centum per annum, shall be assumed by the applicant.

(3) The new mortgage indebtedness shall be in an amount equal to the excess of the statutory sales price of the vessel as of the date of the enactment of this Act over the sum of the cash payment retained by the United States under paragraph (1) plus the readjusted trade-in allowance (determined under paragraph (7)) with re-

H. R. 3603
as amended by Senate

(c) The amount of the adjustment under this section shall be the excess of—

(1) the purchase price of such vessel, reduced by an amount representing both normal depreciation at the rate of 5 per centum per annum from the date of delivery to the purchaser to the date of enactment of this Act, and excessive wear and tear by reason of war service, at the same rate and for the same period as that used in computing the statutory sales price under paragraph (2), or in lieu thereof by the amount of any amortization applicable up to such date under section 23 (t) of the Internal Revenue Code if such amount is larger; over

(2) the statutory sales price of the vessel as of the date of the enactment of this Act, determined as if the vessel were owned by the Commission, plus, in case a credit as part of the purchase price of the vessel was allowed for an obsolete vessel traded in under section 510 of the Merchant Marine Act, as amended, the excess, if any, of such credit above the value of such obsolete vessel determined by the Commission, as of the date of transfer thereof to the Commission, in accord with the standards of valuation in section 8 of this Act.

Merchant Ship Sales Act
of 1946

(b) Such adjustment shall be made, as hereinafter provided, by treating the vessel as if it were being sold to the applicant on the date of the enactment of this Act, and not before that time. The amount of such adjustment shall be determined as follows:

(1) The Commission shall credit the applicant with the excess of the cash payments made upon the original purchase price of the vessel over 25 per centum of the statutory sales price of the vessel as of such date of enactment. If such payment was less than 25 per centum of the statutory sales price of the vessel, the applicant shall pay the difference to the Commission.

(2) The applicant's indebtedness under any mortgage to the United States with respect to the vessel shall be adjusted.

(3) The adjusted mortgage indebtedness shall be in an amount equal to the excess of the statutory sales price of the vessel as of the date of the enactment of this Act over the sum of the cash payment retained by the United States under paragraph (1) plus the readjusted trade-in allowance (determined under paragraph (7)) with respect to any vessel exchanged by the applicant on the original purchase. The adjusted mortgage indebtedness shall be payable in equal annual

spect to any vessel exchanged by the applicant on the original purchase.

(4) The Commission shall credit the applicant with the excess, if any, of the sum of the cash payments made by the applicant upon the original purchase price of the vessel plus the readjusted trade-in allowance (determined under paragraph (7)) over the statutory sales price of the vessel as of the date of the enactment of this Act to the extent not credited under paragraph (1).

(5) The Commission shall also credit the applicant with an amount equal to interest at the rate of $3\frac{1}{2}$ per centum per annum (for the period beginning with the date of the original delivery of the vessel to the applicant and ending with the date of the enactment of this Act) on the excess of the original purchase price of the vessel over the amount of any allowance allowed by the Commission on the exchange of any vessel on such purchase; the amount of such credit first being reduced by any interest on the original mortgage indebtedness accrued up to such date of enactment and unpaid. Interest so accrued and unpaid shall be canceled.

(6) The applicant shall credit the Commission with all amounts paid by the United States to him as charter hire for use of the vessel (exclusive of

installments thereafter during the remaining life of such mortgage with interest on the portion of the statutory sales price remaining unpaid at the rate of $3\frac{1}{2}$ per centum per annum.

(4) The Commission shall credit the applicant with the excess, if any, of the sum of the cash payments made by the applicant upon the original purchase price of the vessel plus the readjusted trade-in allowance (determined under paragraph (7)) over the statutory sales price of the vessel as of the date of the enactment of this Act to the extent not credited under paragraph (1).

(5) The Commission shall also credit the applicant with an amount equal to interest at the rate of $3\frac{1}{2}$ per centum per annum (for the period beginning with the date of the original delivery of the vessel to the applicant and ending with the date of the enactment of this Act) on the excess of the original purchase price of the vessel over the amount of any allowance allowed by the Commission on the exchange of any vessel on such purchase, the amount of such credit first being reduced by any interest on the original mortgage indebtedness accrued up to such date of enactment and unpaid. Interest so accrued and unpaid shall be canceled.

H. R. 3603
as recommended by
House Committee

H. R. 3603
as adopted by
House of Representatives

service, if any, required under the terms of the charter) under any charter party made prior to the date of the enactment of this Act, and any charter hire for such use accrued up to such date of enactment and unpaid shall be canceled; and the Commission shall credit the applicant with the amount that would have been paid by the United States to the applicant as charter hire for bare boat use of vessels exchanged by the applicant on the original purchase (for the period beginning with date on which the vessels so exchanged were delivered to the Commission and ending with the date of the enactment of this Act).

(7) The allowance made to the applicant on any vessel exchanged by him on the original purchase shall be readjusted so as to limit such allowance to the amount provided for under section 8.

(8) There shall be subtracted from the sum of the credits in favor of the Commission under the foregoing provisions of this subsection the amount of any overpayments of Federal taxes by the applicant resulting from the application of subsection (c) (1), and there shall be subtracted from the sum of the credits in favor of the applicant under the foregoing provisions of this subsection the amount of any deficiencies in Federal taxes of the applicant

H. R. 3603
as amended by Senate

Merchant Ship Sales Act
of 1946

(6) The applicant shall credit the Commission with all amounts paid by the United States to him as charter hire for use of the vessel (exclusive of service, if any, required under the terms of the charter) under any charter party made prior to the date of the enactment of this Act, and any charter hire for such use accrued up to such date of enactment and unpaid shall be canceled, and the Commission shall credit the applicant with the amount that would have been paid by the United States to the applicant as charter hire for bare boat use of vessels exchanged by the applicant on the original purchase (for the period beginning with date on which the vessels so exchanged were delivered to the Commission and ending with the date of the enactment of this Act).

(7) The allowance made to the applicant on any vessel exchanged by him on the original purchase shall be readjusted so as to limit such allowance to the amount provided for under section 8.

(8) There shall be subtracted from the sum of the credits in favor of the Commission under the foregoing provisions of this subsection the amount of any overpayments of Federal taxes by the applicant resulting from the application of subsection (c) (1), and there shall be subtracted from the sum

H. R. 3603
as recommended by
House Committee

For the purposes of paragraph (1), the purchase price of a vessel on account of which a construction differential subsidy was paid or agreed to be paid under section 504 of the Merchant Marine Act, 1936, as amended, shall be the net cost of the vessel to the owner.

H. R. 3603
as adopted by
House of Representatives

resulting from the application of subsection (c) (1). If, after making such subtractions, the sum of the credits in favor of the applicant exceeds the sum of the credits in favor of the Commission, such excess shall be paid by the Commission to the applicant. If, after making such subtractions, the sum of the credits in favor of the Commission exceeds the sum of the credits in favor of the applicant, such excess shall be paid by the applicant to the Commission. Upon such payment by the Commission or the applicant, such overpayments shall be treated as having been refunded and such deficiencies as having been paid.

For the purposes of this subsection, the purchase price of a vessel on account of which a construction differential subsidy was paid or agreed to be paid under section 504 of the Merchant Marine Act, 1936, as amended, shall be the net cost of the vessel to the owner.

H. R. 3603
as amended by Senate

For the purposes of paragraph (1) the purchase price of a vessel on account of which a construction differential subsidy was paid or agreed to be paid under section 504 of the Merchant Marine Act, 1936, as amended, shall be the net cost of the vessel to the owner.

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Merchant Ship Sales Act
of 1946

of the credits in favor of the applicant under the foregoing provisions of this subsection the amount of any deficiencies in Federal taxes of the applicant resulting from the application of subsection (c) (1). If, after making such subtractions, the sum of the credits in favor of the applicant exceeds the sum of the credits in favor of the Commission, such excess shall be paid by the Commission to the applicant. If, after making such subtractions, the sum of the credits in favor of the Commission exceeds the sum of the credits in favor of the applicant, such excess shall be paid by the applicant to the Commission. Upon such payment by the Commission or the applicant, such overpayments shall be treated as having been refunded and such deficiencies as having been paid.

For the purposes of this subsection, the purchase price of a vessel on account of which a construction differential subsidy was paid or agreed to be paid under section 501 of the Merchant Marine Act, 1936, as amended, shall be the net cost of the vessel to the owner.

H. R. 3603
as recommended by
House Committee

("Conditions Section")

(d) An adjustment shall be made under this section only if there are included in the adjustment agreement provisions to the effect that—

(no similar provision)

(1) the liability of the United States for bare boat use of the vessel under any charter party made prior to the date of the enactment of this Act shall be limited to 15 per centum per annum of the statutory sales price as of such date; and

H. R. 3603
as adopted by
House of Representatives

(c) An adjustment shall be made under this section only if an adjustment is applied for on all vessels of the applicant with respect to which an adjustment may be made under this section, and then only if the applicant enters into an agreement with the Commission to the effect that, in the case of each such vessel—

(1) depreciation and amortization allowed or allowable with respect to the vessel up to the date of the enactment of this Act for Federal tax purposes shall be treated as not having been allowable; amounts credited to the Commission under subsection (b) (6) shall be treated for Federal tax purposes as not having been received or accrued as income; amounts credited to the applicant under subsection (b) (6) shall be treated for Federal tax purposes as having been received and accrued as income in the taxable year in which falls the date of the enactment of this Act; and the amount credited by the Commission under subsection (b) (5) shall be treated for Federal tax purposes as having been received and accrued as income ratably over the period beginning with the date of the original delivery of the vessel to the applicant and ending with the day before the date of the enactment of this Act;

(2) the liability of the United States for use (exclusive of service, if any, required under the terms of the charter) of the vessel on or after the

H. R. 3603
as amended by Senate

(d) An adjustment shall be made under this section only if there are included in the adjustment agreement provisions binding upon the citizen applicant and any affiliated interest to the effect that—

(see (e) at C-9)

(1) the liability of the United States for use (exclusive of service, if any, required under the terms of the charter) of the vessel under any char-

Merchant Ship Sales Act
of 1946

(c) An adjustment shall be made under this section only if the applicant enters into an agreement with the Commission binding upon the citizen applicant and any affiliated interest to the effect that—

(1) depreciation and amortization allowed or allowable with respect to the vessel up to the date of the enactment of this Act for Federal tax purposes shall be treated as not having been allowable; amounts credited to the Commission under subsection (b) (6) shall be treated for Federal tax purposes as not having been received or accrued as income; amounts credited to the applicant under subsection (b) (5) and (6) shall be treated for Federal tax purposes as having been received and accrued as income in the taxable year in which falls the date of the enactment of this Act;

(2) the liability of the United States for use (exclusive of service, if any, required under the terms of the charter) of the vessel on or after the

H. R. 3603
as recommended by
House Committee

(2) the liability of the United States under any such charter party for loss of the vessel shall be determined on the basis of the statutory sales price as of the date of the enactment of this Act, depreciated to the date of loss at the rate of 5 per centum per annum, plus not to exceed 3 per centum per annum as representing excessive wear and tear by reason of war service; and

(3) in the event the United States, prior to the termination of the existing national emergency declared by the President on May 27, 1941, uses such vessel pursuant to a taking, or pursuant to a bareboat charter made, on or after the date of the enactment of this Act, the compensation to be paid to the purchaser, his receivers, and trustees, shall in no event be greater than 15 per centum per annum of the statutory sales price as of such date.

H. R. 3603
as adopted by
House of Representatives

date of the enactment of this Act under any charter party shall not exceed 15 per centum per annum of the statutory sales price of the vessel as of such date of enactment; and the liability of the United States under any such charter party for loss of the vessel shall be determined on the basis of the statutory sales price as of the date of the enactment of this Act, depreciated to the date of loss at the rate of 5 per centum per annum, plus not to exceed 3 per centum per annum as representing excessive wear and tear by reason of war service; and

(3) in the event the United States, prior to the termination of the existing national emergency declared by the President on May 27, 1941, uses such vessel pursuant to a taking, or pursuant to a bareboat charter made, on or after the date of the enactment of this Act, the compensation to be paid to the purchaser, his receivers, and trustees, shall in no event be greater than 15 per centum per annum of the statutory sales price as of such date.

H. R. 3603
as amended by Senate

ter party made prior to the date of the enactment of this Act shall be limited to 15 per centum per annum of the adjusted purchase price; Provided, That any payments made to the Commission on the original purchase price of the vessel in excess of $33\frac{1}{3}$ per centum of the adjusted purchase price, and interest actually paid to the Commission on the amount of the price adjustment shall, at the option of the applicant, be credited against the amount of charter hire required to be refunded to the United States pursuant to the provisions of this subsection; and

(2) the liability of the United States under any such charter party for loss of the vessel shall be determined on the basis of the adjusted purchase price, depreciated to the date of loss at the rate of 5 per centum per annum; and

(3) in the event the United States, prior to the termination of the existing national emergency declared by the President on May 27, 1941, uses such vessel pursuant to a taking, or pursuant to a bareboat charter made, on or after the date of the enactment of this Act, the compensation to be paid to the purchaser, his receivers, and trustees, shall in no event be greater than 15 per centum per annum of the adjusted purchase price; and

(4) if the applicant for an adjustment under this section has received

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Merchant Ship Sales Act
of 1946

date of the enactment of this Act under any charter party shall not exceed 15 per centum per annum of the statutory sales price of the vessel as of such date of enactment; and the liability of the United States under any such charter party for loss of the vessel shall be determined on the basis of the statutory sales price as of the date of the enactment of this Act, depreciated to the date of loss at the rate of 5 per centum per annum; and

(3) in the event the United States, prior to the termination of the existing national emergency declared by the President on May 27, 1941, uses such vessel pursuant to a taking, or pursuant to a bareboat charter made, on or after the date of the enactment of this Act, the compensation to be paid to the purchaser, his receivers, and trustees, shall in no event be greater than 15 per centum per annum of the statutory sales price as of such date.

C-9

H. R. 3603
as recommended by
House Committee

H. R. 3603
as adopted by
House of Representatives

H. R. 3603
as amended by Senate

Merchant Ship Sales Act
of 1946

("Tax Section")

payment or has a claim for payment on account of the loss or requisition for title of a vessel built subsequent to January 1, 1935, taking place since May 27, 1941, and before the date of enactment of this Act, the payment or claim for payment on account of such loss or title requisition shall be redetermined or settled in an amount not to exceed the adjusted basis of the vessel in the hands of the owner as of the date of loss or requisition, determined under section 113 (b) of the Internal Revenue Code.

(e) (1) If an adjustment in the purchase price of a vessel is made under this section, the income and excess-profits taxes of the vessel owner under the Internal Revenue Code for the taxable year within which the delivery of the vessel was made to the purchaser and for subsequent taxable years, shall be redetermined. For such purposes of redetermination, the vessel shall be considered as having been acquired at the adjusted purchase price, and the income and deductions attributable to such vessel shall be determined as if this section had been in effect on the date of such delivery.

(e) (2) At the election of the taxpayer, any overpayment of tax resulting from the recomputation required under this subsection for any taxable year may, under rules and regulations prescribed by the Commissioner of Internal Revenue, with

**H. R. 3603
as recommended by
House Committee**

(e) Section 506 of the Merchant Marine Act, 1936, as amended, shall not apply to any vessel with respect to which an adjustment is made under this section.

**H. R. 3603
as adopted by
House of Representatives**

(d) Section 506 of the Merchant Marine Act, 1936, as amended, shall not apply to any vessel with respect to which an adjustment is made under this section.

**H. R. 3603
as amended by Senate**

the approval of the Secretary of the Treasury, in lieu of being credited or refunded, be applied as provided in subsection (b) of this section.

(f) Section 506 of the Merchant Marine Act, 1936, as amended, shall not apply with respect to (1) any vessel which is eligible for an adjustment under this section, or (2) any vessel described in clause (1), (2), (3), or (4) of subsection (a) of this section, the contract for the construction of which is made after September 2, 1945, and prior to the date of enactment of this Act.

**Merchant Ship Sales Act
of 1946**

(d) Section 506 of the Merchant Marine Act, 1936, as amended, shall not apply with respect to (1) any vessel which is eligible for an adjustment under this section, or (2) any vessel described in clause (1), (2), (3), or (4) of subsection (a) of this section, the contract for the construction of which is made after September 2, 1945, and prior to the date of enactment of this Act.

APPENDIX D

(Portion of Record Not Printed.)

Exhibit S-1.

Contract No. McC 42281

INTERIM AGREEMENT FOR ADJUSTMENT OF PRIOR
SALES OF VESSELS TO CITIZENS PURSUANT
TO SECTION 9 OF THE MERCHANT SHIP
SALES ACT OF 1946

THIS AGREEMENT entered into this 30th day of December, 1946, between WATERMAN STEAMSHIP CORPORATION, a corporation organized and existing under the laws of the STATE OF ALABAMA (hereinafter called the "Applicant") and the United States Maritime Commission (hereinafter called the "Commission").

WITNESSETH

1. The Applicant, on the 31st day of May, 1946, filed an application under the provisions of Section 9 of the Merchant Ship Sales Act of 1946 (hereinafter called the "Act") for adjustment in price under said Act of 18 vessels, referred to in this Agreement and the Exhibits hereto annexed (hereinafter called "the war-built vessels"), said application having been filed in the form and manner prescribed by the Commission within 60 days after the date of publication in the Federal Register, pursuant to Section 3(c) of the Act of the pre-war domestic cost of a standard vessel applicable to the type of the war-built vessels referred to herein. Such vessels are treated, for the purposes of this Agreement, except as hereinafter otherwise specifically provided, as if they were sold to Applicant on the date of the enactment of the Act, viz., March 8, 1946, and not before that time, as required by Section 9(b) of the Act.

2. The Commission has found and determined, in order to carry out the policy of the Merchant Ship Sales Act of 1946, that it is necessary to enter into agreements for the interim adjustment in the purchase price of vessels eligible

therefor under Section 9 of the Act, and on September 24, 1946 approved the entering into of such interim agreements with Applicants for adjustment; that the Applicant is, and on March 8, 1946 was, a citizen of the United States and on said date owned 17 of the war-built vessels, and was a party to a contract with the Commission to purchase from it one of the war-built vessels which had not been delivered on said date; that all of the vessels were constructed under contracts between the Commission and the builder entered into prior to September 3, 1945, and were purchased by Applicant from the Commission prior to March 8, 1946 (the date of the enactment of the Act); that the vessels were delivered by their builder subsequent to December 31, 1940, and that the Applicant is lawfully entitled to adjustment in the price of the vessels, pursuant to the provisions of Section 9 of the Act.

Now, THEREFORE, in consideration of the foregoing and the mutual covenants of the parties hereinafter set forth, it is agreed as follows:

PART I.

ARTICLE I. That the adjustment and credits provided for in this interim agreement are interim adjustments in the original cost of the war-built vessels to the Applicant, and interim credits to which the Commission and the Applicant are respectively entitled, pending a final determination with respect to matters hereinafter set forth, and shall be effective as of March 8, 1946.

ARTICLE II. There is annexed hereto and made a part hereof, a tabulation marked "Exhibit A", setting forth with respect to each of the war-built vessels—

(a) The name of the vessel,

(b) The date of the purchase agreement under which the vessel was sold by the Commission to the Applicant,

(c) The date on which the vessel was delivered by the builder to the Commission,

(d) The date on which the vessel was delivered by the Commission to the Applicant under said purchase agreement,

(e) The cost of the vessel to the Applicant,

(f) The amount of cash payments made by the Applicant to the Commission prior to March 8, 1946 on account of the cost of the vessel, and

(g) The amount of the unadjusted mortgage indebtedness to the Commission as of March 8, 1946 on account of the original cost of the vessel.

ARTICLE III. There is annexed hereto and made a part hereof, a tabulation marked "Exhibit B", setting forth with respect to each of the war-built vessels—

(a) The name of the vessel,

(b) The unadjusted statutory sales price of the standard vessel of the type used for the purpose of determining the pre-war domestic cost thereof, as determined by the Commission and published in the Federal Register of April 23, 1946,

(c) The amount subtracted from the unadjusted statutory sales price of such standard vessel because the war-built vessel lacks certain desirable features which are incorporated in the standard vessel, as provided in Section 3(d)(2) of the Act,

(d) The amount added to the unadjusted statutory sales price of such standard vessel because the war-built vessel contains desirable features which are not incorporated in the standard vessel used for the purpose of determining pre-war domestic cost, as provided in Section 3(d)(3) of the Act,

(e) The amount representing normal depreciation for the period beginning with the date of the delivery

of the vessel by the builder to the Commission, and ending with March 8, 1946, as provided in Section 3(d)(4) of the Act,

(f) The adjustment for excessive wear and tear by reason of war service, determined on the basis of the general formula heretofore adopted by the Commission, as provided under Section 3(d)(4) of the Act,

(g) The resulting interim adjusted statutory sales price of the war-built vessel as of March 8, 1946, without regard to the provisions of the last paragraph of Section 3(d) of the Act, providing for the establishment of a minimum statutory sales price of war-built vessels,

(h) The interim adjusted statutory sales price of the war-built vessel as of March 8, 1946, giving effect, where applicable, to the provisions of the last paragraph of Section 3(d) of the Act, providing for the establishment of a minimum statutory sales price of war-built vessels.

ARTICLE IV. There is annexed hereto and made a part hereof, a tabulation marked "Exhibit C", setting forth with respect to each of the war-built vessels—

- (a) The name of the vessel,
- (b) The cost of the vessel to the Applicant,
- (c) The applicable interim adjusted statutory sales price,
- (d) The amount equal to 25 per centum of the interim adjusted statutory sales price of the vessel as of March 8, 1946 to be retained by the Commission, as provided in Section 9(b)(1) of the Act,
- (e) The cash payments made by the Applicant to the Commission prior to March 8, 1946 on account of the cost of the vessel,

(f) That portion of the cash payment set forth in Column (e), which was made on the cost of the vessel in accordance with the provisions of Section 112(f) of the Internal Revenue Code relating to involuntary conversions,

(g) The amount of credit allowable to the Applicant, as of March 8, 1946, on account of the cash payments to the Commission on the original cost of the war-built vessel in excess of 25 per centum of the interim adjusted statutory sales price thereof, as provided in Section 9(b)(1) of the Act,

(h) The amount of the interim adjusted mortgage indebtedness of the Applicant with respect to each of the war-built vessels, as provided under Section 9(b)(3) of the Act, determined for the purpose of this interim agreement.

The Commission has not made a redetermination of the trade-in allowance as required by Section 9(b)(7) of the Act with respect to the steamships WEST KYSKA, LAFAYETTE, ARIZPA and KOFRESI, exchanged by the Applicant upon the original purchase of the war-built vessels WARRIOR, JEAN LAFITTE, AFOUNDRIA and WACOSTA, respectively. Accordingly, it is understood and agreed with respect to the interim adjusted mortgage indebtedness on the war-built vessels WARRIOR, JEAN LAFITTE, AFOUNDRIA and WACOSTA, that for the purposes of this interim agreement, no allowance of credit is being made with respect to the vessels exchanged by the Applicant on the original purchase of said war-built vessels.

It is further agreed that the Commission will make such redetermination of the trade-in allowance as provided in Section 9(b)(7) of the Act as soon as practicable, and that the amount of such allowance shall be credited on the mortgage indebtedness of the four war-built vessels—SS WARRIOR, SS JEAN LAFITTE, SS AFOUNDRIA, and SS WACOSTA—prorated equally over the readjusted unpaid installments on such mortgage indebtedness as of

March 8, 1946. If no mortgage indebtedness is outstanding against such four war-built vessels at the time such redemption of the trade-in allowance is made, or if the amount of outstanding mortgage indebtedness at that time is less than the readjusted trade-in allowance, the amount of such allowance, or the difference between the outstanding mortgage indebtedness against the respective vessels and the amount of such allowance shall be credited on the mortgage indebtedness of such of the war-built vessels as the Applicant may designate. If the Applicant has no outstanding mortgage indebtedness to the Commission at such time, the amount of the readjusted allowance shall be paid to the Applicant.

ARTICLE V. The Applicant's unadjusted mortgage indebtedness to the United States as of March 8, 1946 with respect to the cost of each of the war-built vessels shall be adjusted by the Commission, by giving credit to the Applicant for the amount by which such unadjusted mortgage indebtedness on the applicable war-built vessel, as shown in Column (g) of Exhibit "A", exceeds 75 per centum of the estimated adjusted statutory sales price thereof, as shown in Column (h) of Exhibit "B". Such credits shall be effective as of March 8, 1946 and the amounts thereof shall be prorated equally over the installments of the unadjusted mortgage indebtedness unpaid as of the date of this Agreement. The adjusted mortgage indebtedness on the seven war-built vessels, YAKA, HASTINGS, MADAKET, ANDREW JACKSON, CITY OF ALMA, KYSKA and MAIDEN CREEK, shall be further reduced by the amounts and in the manner provided in Article XI hereof, relating to the application of payments heretofore made to the Commission on the cost of said seven war-built vessels under the provisions of Section 112(f) of the Internal Revenue Code.

PART II.

ARTICLE VI. There is annexed hereto and made a part hereof, a tabulation marked "Exhibit D", setting forth with respect to the war-built vessels—

- (a) The name of the vessel,
- (b) The date of delivery of the vessel to the Applicant, and
- (c) The amount of the cash payments made upon the cost of each vessel in excess of 25 per centum of the statutory sales price thereof, as of March 8, 1946.

ARTICLE VII. There is annexed hereto and made a part hereof, a tabulation marked "Exhibit E", setting forth with respect to the war-built vessels—

- (a) The name of the vessel,
- (b) The cost of the vessel to the Applicant,
- (c) The amount of the allowance of credit, if any, made by the Commission on the exchange of a vessel on the purchase of a war-built vessel,
- (d) The excess of the cost of the vessel to the Applicant over the amount of such allowance of credit,
- (e) An amount equal to interest at the rate of 3½ per centum per annum from the date of the original delivery of the war-built vessel to the Applicant, and ending with March 8, 1946, on the cost of such war-built vessel to the Applicant, less the amount, if any, allowed by the Commission on the exchange of any vessel on the purchase of any of the war-built vessels,
- (f) The amount of any interest on the original mortgage indebtedness accrued for the period ending March 8, 1946, and unpaid as of that date,
- (g) The net amount of interest to be credited to the Applicant under the provisions of Section 9(b)(5) of the Act.

ARTICLE VIII. There is annexed hereto and made a part hereof, a tabulation marked "Exhibit F", with respect to four vessels exchanged by the Applicant on the original purchase of four war-built vessels, and setting forth—

(a) The name of the vessels so exchanged,

(b) The date on which the vessels so exchanged were delivered to the Commission,

(c) The date on which the payment to the Applicant of charter hire on such vessels would have ceased, and

(d) With respect to each vessel so exchanged, the amount that would have been paid by the United States to the Applicant as charter hire for use of the vessel (exclusive of service, if any, required under the terms of the charter) under any charter party made prior to March 8, 1946.

ARTICLE IX. There is annexed hereto and made a part hereof, a tabulation marked "Exhibit G", setting forth with respect to the credits to Applicant provided for in Section 9(b)(8) of the Act—

(a) Taxable year,

(b) Taxable net income as reported by Applicant,

(c) All amounts paid by the United States to Applicant as charter hire for use of the war-built vessels (exclusive of service, if any, required under the terms of the charter) under charter parties between the Applicant and the Commission with respect to such vessels, such charter hire being treated as not having been received or accrued as income for Federal tax purposes, as provided in Section 9(c)(1) of the Act,

(d) The amount of depreciation and amortization treated as not having been allowed or allowable,

(e) Net reduction in taxable net income, as provided in Section 9(c)(1) of the Act,

(f) Adjusted taxable net income,

(g) Federal taxes paid by Applicant,

(h) Federal taxes payable after giving effect to net reduction in taxable net income,

(i) The amount of overpayment of Federal taxes.

ARTICLE X. There is annexed hereto and made a part hereof, a tabulation marked "Exhibit H", setting forth with respect to each of the war-built vessels—

(a) The name of the vessel,

(b) Contract number of charter party under which the vessel was chartered to the United States,

(c) All amounts paid by the United States to Applicant as charter hire for use of the vessel (exclusive of service, if any, required under the terms of the charter) for the period up to, and including, March 7, 1946.

ARTICLE XI. There is annexed hereto and made a part hereof, a tabulation marked "Exhibit I", setting forth with respect to seven of the war-built vessels—

(a) The name of the vessel,

(b) The amount of payments made by Applicant on account of the cost of the vessel under the provisions of Section 112(f) of the Internal Revenue Code, relating to involuntary conversions,

(c) The amount representing 25 per centum of the adjusted statutory sales price of the vessel,

(d) The amount by which the payments, under the provisions of Section 112(f) of the Internal Revenue Code, exceed 25 per centum of the adjusted statutory sales price.

Notwithstanding any other provision of this interim agreement, it is understood and agreed, with respect to the seven war-built vessels upon the cost of which the cash payments shown in said Exhibit "I" have been made under the provisions of Section 112(f) of the Internal Revenue Code relating to involuntary conversions, the amount of such payments which exceeds the 25 per centum of the adjusted statutory sales price of the respective vessels retained by the Commission under the provisions of Section 9(b)(1) of the Act, shall be applied by the Commission to the payment of the adjusted mortgage notes on the respective seven vessels in the order of those first maturing subsequent to March 8, 1946. The application of such funds to the payment of the aforesaid mortgage notes shall be made as of March 8, 1946, but the parties hereto reserve for the final adjustment provided for herein the determination of the interest and the amount thereof, if any, which shall be allowed as a credit upon the payments heretofore made under the provisions of Section 112(f) of the Internal Revenue Code.

ARTICLE XII. There is annexed hereto and made a part hereof, a computation marked "Exhibit J", setting forth—

(a) The total of the cash payments made by Applicant, prior to March 8, 1946, upon the cost of the vessels to the Applicant in excess of 25 per centum of the statutory sales price of the vessel. (See Exhibit "D"),

(b) The total amount equal to interest at the rate of $3\frac{1}{2}$ per centum per annum on the cost of the vessel to Applicant, less the amount of any allowance of credit made by the Commission on a vessel exchanged on the original purchase of the new vessel. (See Exhibit "E"),

(c) The total amount that would have been paid by the United States as charter hire for bareboat use of vessels exchanged by the Applicant on the original purchase of new vessels. (See Exhibit "F"),

(d) The total amount of overpayment of Federal taxes by Applicant, less 10 per cent thereof, credit for which is withheld for the purposes of this interim agreement, as provided in Article XVII. (See Exhibit "G"),

(e) The total amounts paid by the United States to Applicant as charter hire for the use of the vessels. (See Exhibit "H"),

(f) The net credit to the Applicant on account of such interim adjustment.

It is understood and agreed that the Commission shall credit the Applicant with the amounts shown in Items (a), (b), (c) and (d) of said Exhibit "J", aggregating the sum of \$13,229,321.60, and that the Applicant shall credit the Commission with the amount shown in Item (e), representing the total charter hire received by the Applicant from the United States for the use of the vessels for the period ending with March 8, 1946, in the sum of \$13,058,605.36, as required by Section 9 of the Act.

It is further agreed that for the purposes of this interim agreement, the sum of the interim credits in favor of the Applicant exceeds the sum of the interim credits in favor of the Commission by \$170,716.24, after giving effect to the provisions of Article XVII hereof, withholding credit of ten per centum of the overpayment of Federal taxes, as set forth in Exhibit "G". Such amount of \$170,716.24, as shown by Item (f) of said Exhibit "J", shall be credited by the Commission on the adjusted mortgage indebtedness of the Applicant and applied on the unpaid installments thereof with respect to such vessels as may be designated by the Applicant.

PART III.

ARTICLE XIII. It is agreed between the Applicant and the Commission that there shall be a final adjustment in the purchase price of the vessels as soon as practicable after—

(1) there has been a final determination as to the adjustments and credits and the other calculations set forth in the exhibits attached hereto and made a part hereof;

(2) the Commission shall have made a redetermination of the allowance of credit with respect to each of the vessels exchanged by the Applicant on the original purchase of new vessels, and

(3) a final determination has been made as to the overpayment or deficiency in the Federal taxes of the Applicant resulting from the adjustment provided for herein for each of the taxable years, beginning with the first taxable year in which any of the war-built vessels was acquired by the Applicant, and ending with the taxable year 1946, except that if by reason of the carry-over and carry-back provisions of the Internal Revenue laws other taxable years are involved, the tax returns of the Applicant for such taxable years shall have been audited and closed, unless the Applicant shall have waived in writing its rights to any tax adjustment by reason of this agreement, with respect to such other years.

ARTICLE XIV. It is understood and agreed that the adjustment and credits provided for in this interim agreement are based upon the several exhibits annexed hereto and made a part hereof, and that the calculations in each of said exhibits have been computed upon a tentative basis and shall be revised and adjusted between the parties as soon as the amounts can be finally determined in accordance with the provisions of the Act and of this interim agree-

ment. When such final determinations have been made, a final adjustment shall be made in the price of the vessels, and the credits to the Commission and to the Applicant, respectively, giving effect to such final determinations, such final adjustment to be effective as of March 8, 1946.

ARTICLE XV. The Applicant agrees that with respect to any and all of the vessels:

(1) depreciation and amortization allowed, or allowable, with respect to the vessels up to March 8, 1946 for Federal tax purposes, shall be treated as not having been allowable; amounts credited to the Commission under Section 9(b)(6) of the Act shall be treated for Federal tax purposes as not having been received or accrued as income; amounts credited to the Applicant under Section 9(b)(5) and (6) of the Act shall be treated for Federal tax purposes as having been received and accrued as income in the taxable year of the Applicant, 1946;

(2) the liability of the United States for use of the vessels (exclusive of service, if any, required under the terms of the charter) on or after March 8, 1946, under any charter party, shall not exceed 15 per centum per annum of the statutory sales price of the vessel, as of March 8, 1946; and the liability of the United States under any such charter party for the loss of the vessel, shall be determined on the basis of the statutory sales price as of such date, depreciated to the date of loss at the rate of 5 per centum per annum; and

(3) in the event the United States, prior to the termination of the existing national emergency declared by the President on May 27, 1941, uses such vessel pursuant to a taking, or pursuant to a bareboat charter made on or after March 8, 1946, the compensation to be paid by the Applicant, its receivers and trustees, shall in no event be greater than 15 per centum per annum of the statutory sales price as of such

date. This Article shall be binding upon the Applicant and any interest affiliated therewith.

ARTICLE XVI. For the purposes of this interim agreement, the credits to the Applicant and to the Commission, respectively, as provided in Article XII hereof, shall be made as of the date of this interim agreement. With respect to payments of principal and interest made by the Applicant on and after March 8, 1946 on the original mortgage indebtedness of the war-built vessels, the Commission shall credit the Applicant with the difference between the amount of such payments and the amount of principal and interest which would have been payable after giving effect, as of March 8, 1946, to the adjustments provided for in Article V hereof. The amount of such credit shall be determined as soon as practicable, and credited upon the Applicant's aggregate mortgage indebtedness, if any, to the Commission on the 18 war-built vessels at the time such determination is made, and shall be credited against such unpaid installments thereof as the Applicant may designate. If no such mortgage indebtedness shall exist at the time said determination is made, the amount of the credit shall be paid by the Commission to the Applicant.

ARTICLE XVII. Applicant agrees that pending final adjustment hereinbefore provided, the Commission shall withhold credit to the Applicant of the sum of \$38,584.80, representing 10 per centum of the overpayment of Federal taxes tentatively determined for the purposes of this agreement. (See Exhibit "G").

ARTICLE XVIII. Applicant and the Commission further agree that when final adjustment and settlement of this agreement is made as herein provided for, such adjustment and settlement shall constitute and become full, final and complete discharge of the respective liabilities of the parties one to the other (1) under the terms of the contracts by virtue of which Applicant acquired from the Commission

title to the war-built vessels herein named, and (2) pursuant to the provisions of the Act.

ARTICLE XIX. The Applicant agrees not to employ any Member of Congress, either with or without compensation, as an attorney, agent, officer or director in connection with this contract.

ARTICLE XX. No Member of or Delegate to Congress, nor Resident Commissioner, shall be admitted to any share or part of this contract or to any benefit that may arise therefrom, except as provided in Section 116 of the Act approved March 4, 1909 (35 Stat. 1109).

IN WITNESS WHEREOF, the parties have executed five original counterparts of this Agreement as of the day and year first above written.

UNITED STATES MARITIME COMMISSION

By (sgd) A. J. WILLIAMS
Secretary

Attest:

(sgd) R. L. McDONALD
Asst. Secretary

WATERMAN STEAMSHIP CORPORATION

By (sgd) W. B. GARNER
Executive Vice President

Attest:

(sgd) STERLING F. STODENMIRE JR.
Asst. Secretary

Approved as to Form:

(sgd) FRANCIS B. GOERTNER
Assistant General Counsel
United States Maritime
Commission.

(sgd) BON GEASLIN
Attorney for Waterman
Steamship Corporation.

EXHIBIT A

**ATTACHED TO AND MADE A PART OF INTERIM AGREEMENT BETWEEN
WATERMAN STEAMSHIP CORPORATION AND THE UNITED STATES MARITIME COMMISSION**

(a) Name of the Vessel	(b) Date of Purchase Agreement	(c) Date of Original Delivery by Builder	(d) Date of Delivery by Commission to Applicant	(e) Cost of Vessel to Applicant	(f) Cash Payments Made by Applicant to Com- mission prior to March 8, 1946 on account of cost of vessel	(g) Unadjusted Mortgage Indebtedness to Commis- sion as of March 8, 1946 on account of original cost
Fairisle	April 22, 1942	July 31, 1942	July 31, 1942	\$ 3,023,805.28	\$ 2,196,184.04	\$ 827,621.24
Fairland	August 27, 1942	Aug. 31, 1942	Aug. 31, 1942	3,036,211.74	2,093,593.38	942,618.36
Raphael Seamus	Oct. 24, 1942	Oct. 30, 1942	Oct. 30, 1942	3,045,258.66	2,106,982.80	938,275.86
Bienville	Feb. 9, 1943	May 31, 1943	May 31, 1943	3,000,000.00	1,583,720.00	1,416,280.00
Asalea City	Feb. 9, 1943	July 2, 1943	July 2, 1943	3,001,657.44	1,622,387.82	1,379,269.62
Warrior	July 16, 1943	July 26, 1943	July 26, 1943	2,991,127.82	423,713.82	2,007,414.00
Jean Lafitte	July 22, 1943	Sept. 10, 1943	Sept. 10, 1943	2,808,924.50	213,404.50	1,919,520.00
Afoundria	July 22, 1943	Nov. 11, 1943	Nov. 11, 1943	2,698,763.77	201,765.77	1,810,098.00
Wacosta	July 22, 1943	Apr. 6, 1944	Sept. 6, 1944	2,660,169.32	198,039.32	1,775,430.00
Yaka	Aug. 14, 1944	Sept. 22, 1944	Sept. 22, 1944	2,615,102.31	728,566.77 5/	1,886,535.54
Hastings	Aug. 14, 1944	Nov. 17, 1944	Nov. 17, 1944	2,642,706.03	729,870.49 5/	1,912,835.54
Madaket	Aug. 14, 1944	Jan. 19, 1945	Jan. 19, 1945	2,641,046.21	732,210.67 5/	1,908,835.54
Andrew Jackson	Aug. 14, 1944	Mar. 23, 1945	Mar. 23, 1945	2,691,194.97	731,959.43 5/	1,959,235.54
City of Alma	Aug. 14, 1944	May 4, 1945	May 4, 1945	2,626,493.54	739,258.01 5/	1,887,235.53
Kyaka	Nov. 2, 1945 1/	Nov. 9, 1945	Nov. 9, 1945	2,442,739.51	638,291.00 5/	1,804,448.51
Maiden Creek	Nov. 2, 1945 2/	Jan. 5, 1946	Jan. 5, 1946	2,417,358.53	638,291.00 5/	1,779,067.53
Fairport	Nov. 2, 1945 3/	Feb. 27, 1946	Feb. 27, 1946	2,450,070.78	306,270.78	2,143,800.00
John B. Waterman	Feb. 27, 1946 4/	Mar. 11, 1946	Mar. 11, 1946	2,788,336.61	749,136.61	2,439,200.00
				<u>\$49,584,567.02</u>	<u>\$16,233,646.21</u>	<u>\$30,737,720.81</u>

1/ Construction Contract No. MCC-13632, entered into by Commission Jan. 21, 1943

2/ Construction Contract No. MCC-13633, entered into by Commission Jan. 21, 1943

3/ Construction Contract No. MCC-13634, entered into by Commission Jan. 21, 1943

4/ Construction Contract No. MCC-34769 entered into by Commission June 19, 1945.

5/ Includes payments made in accordance with the provisions of Section 112 (f) of the Internal Revenue Code relating to involuntary conversions.

EXHIBIT B

ATTACHED TO AND MADE A PART OF INTERIM AGREEMENT BETWEEN WATERMAN STEAMSHIP CORPORATION AND THE UNITED STATES MARITIME COMMISSION

(a) Name of the Vessel	(b) Unadjusted statutory sales price of standard vessel of the general type used for the purpose of determining pre-war domestic cost thereof (Note 1)	(c) Estimated amount subtracted because vessel lacked certain desirable fea- tures which are incorporated in the standard vessel	(d) Estimated Amt. added to unadjusted statutory sales price for desirable fea- tures which are not incor- porated in the standard vessel	(e) Adjustment represented by normal depreciation for period beginning with date of deliv- ery of vessel to builder to and including Mar. 7, 1946	(f) Adjustment for excessive wear & tear by reason of war service determined on the basis of the general formula hereto- fore adopted by the Commission	(g) Resulting adjusted statutory sales price as of Mar. 8, 1946 without regard to provisions of last paragraph of Sect. 3d of the Act	(h) Estimated statutory sales price of vessel giving effect where applicable to provisions of last paragraph of Sect. 3d of the Act
Fairiale	\$ 1,050,000	\$ 6,000.00	\$ 32,500.00	\$ 193,917.46	\$ 48,442.50	\$ 834,140.04	\$ 982,318.00
Fairland	1,050,000	6,000.00	32,500.00	189,493.49	48,442.50	838,564.01	982,318.00
Raphael Semmes	1,050,000	6,000.00	32,500.00	180,645.55	26,912.50	868,941.95	982,318.00
Bienville	1,050,000	6,000.00	20,000.00	147,502.46	26,600.00	889,897.54	971,818.00
Azalea City	1,050,000	6,000.00	32,500.00	144,516.44	26,912.50	905,071.06	982,318.00
Warrior	1,050,000	6,000.00	20,000.00	139,340.27	26,600.00	898,059.73	971,818.00
Jean Lafitte	1,050,000	24,300.00	20,000.00	130,354.38	10,457.00	904,888.62	971,818.00
Alfoundria	1,050,000	14,000.00	20,000.00	122,669.59	10,560.00	922,770.41	971,818.00
Wacosta	1,050,000	6,000.00	20,000.00	102,173.15	10,640.00	951,186.85	971,818.00
Yaka	1,050,000	6,000.00	20,000.00	77,540.82	4,980.58	981,478.60	982,503.49
Hastings	1,050,000	6,000.00	20,000.00	69,378.63	4,204.92	990,416.45	991,365.92
Madaket	1,050,000	6,000.00	20,000.00	60,196.16	4,064.48	999,739.36	1,001,336.28
Andrew Jackson	1,050,000	6,000.00	20,000.00	51,013.70	2,361.02	1,010,625.28	1,011,306.58
City of Alma	1,050,000	6,000.00	20,000.00	44,892.05	1,755.60	1,017,352.35	1,017,953.44
Kyska	1,050,000	6,000.00	20,000.00	17,344.66	-	1,046,655.34	1,046,883.56
Maiden Creek	1,050,000	6,000.00	20,000.00	9,036.71	-	1,054,963.39	1,055,082.19
Fairport	1,050,000	6,000.00	32,500.00	1,327.19	-	1,075,172.81	1,075,172.81
John B. Waterman	1,050,000	6,000.00	32,500.00	-	-	1,075,500.00	1,076,500.00
	<u>\$18,900,000</u>	<u>\$134,300.00</u>	<u>\$435,000.00</u>	<u>\$1,681,342.71</u>	<u>\$252,933.60</u>	<u>\$17,266,423.79</u>	<u>\$18,046,466.33</u>

Note (1). As determined by the Commission and published in Federal Register of April 23, 1946.

EXHIBIT C

ATTACHED TO AND MADE A PART OF INTERIM AGREEMENT BETWEEN
WATERMAN STEAMSHIP CORPORATION AND THE UNITED STATES MARITIME COMMISSION

(a) Name of the Vessel	(b) Cost of the vessel to the applicant	(c) Applicable estimated adjusted statutory sales price	(d) Amount equal to 25% of the adjusted statutory sales price of vessel as of Mar. 8, 1946 to be retained by Commission	(e) Amount of cash payments made by applicant to Commission prior to Mar. 8, 1946 on account of cost of vessel	(f) Cash payments made on cost of the Vessels in accordance with the provisions of Section 112 f of the Internal Revenue Code relat- ing to involuntary conversions	(g) Amt. of credit to ap- plicant as of Mar. 8, 1946 on acct. of cash payment to the Commis- sion on original cost of vessel in excess of 25% of the adjusted sta- tutory as provided in Sec. 9(b) of the Act	(h) Amount of adjusted mortgage indebted- ness determined for the purpose of this interim agreement as pro- vided under Sec- tion 9(b)(3) of the Act
Fairisle	\$ 3,023,805.28	\$ 982,318.00	\$ 245,579.50	\$ 2,195,184.04		\$ 1,950,604.54	\$ 736,738.50
Fairland	3,036,211.74	982,318.00	245,579.50	2,093,593.38		1,848,013.88	736,738.50
Raphael Semmes	3,045,258.66	982,318.00	245,579.50	2,105,982.80		1,851,403.30	736,738.50
Blenville	3,000,000.00	971,818.00	242,954.50	1,583,720.00		1,340,765.50	728,263.50
Azalea City	3,001,657.44	982,318.00	245,579.50	1,622,337.82		1,376,808.32	736,738.50
Warrior	2,991,127.82	971,818.00	242,954.50	423,713.82		180,759.32	723,863.50
Jean Lafitte	2,808,324.50	971,818.00	242,954.50	213,404.50		(29,550.00)	723,863.50
Alfoundria	2,698,753.77	971,818.00	242,954.50	201,755.77		(41,188.73)	723,863.50
Macosta	2,660,169.32	971,818.00	242,954.50	198,039.32		(44,915.18)	723,863.50
Yaka	2,615,102.31	982,503.49	245,625.87	722,566.77	\$ 699,164.46 1/	29,402.31	283,339.03 2/
Hastings	2,642,706.03	991,365.98	247,841.49	729,870.49	699,164.46 1/	30,706.03	292,201.52 2/
Madaket	2,641,046.21	1,001,336.28	250,334.07	732,210.62	699,164.46 1/	33,046.21	302,171.82 2/
Andrew Jackson	2,691,194.97	1,011,306.58	252,826.64	731,959.43	699,164.46 1/	32,794.97	312,142.12 2/
City of Alma	2,626,493.54	1,017,953.44	254,488.36	739,258.01	699,164.47 1/	40,093.54	313,734.97 2/
Kyska	2,442,739.51	1,046,883.56	261,720.89	638,291.00	638,291.00 1/	-	408,592.56 2/
Malden Creek	2,417,358.53	1,055,082.19	263,770.55	638,291.00	638,291.00 1/	-	416,791.19 2/
Fairport	2,450,070.78	1,075,172.81	268,793.20	306,270.78		37,477.58	806,379.61
John B. Waterman	2,783,336.61	1,076,500.00	269,125.00	349,136.61		80,011.61	807,375.00
	<u>\$49,580,967.02</u>	<u>\$18,046,460.33</u>	<u>\$4,511,616.57</u>	<u>\$16,233,646.21</u>	<u>\$4,772,404.31</u>	<u>\$ 8,726,233.20</u>	<u>\$10,539,053.32</u>

1/ Column (e) includes the amounts shown in column (f) as cash payments made in accordance with the provisions of Sec. 112 (f) of the Internal Revenue Code

2/ These amounts represent the adjusted mortgage indebtedness after the application of the full amount of cash payments made pursuant to Sec. 112 (f) of the Internal Revenue Code shown in column (f), as provided in Article XI of the Interim Agreement. The portion of these cash payments in excess of 25% on each vessel is indicated in Column (d) of Exhibit "I" hereof.

EXHIBIT D

ATTACHED TO AND MADE A PART OF INTERIM AGREEMENT BETWEEN
WATERMAN STEAMSHIP CORPORATION AND THE UNITED STATES MARITIME COMMISSION

(a)	(b)	(c)
Name of Vessel	Date of Delivery of vessel to applicant	Amount of cash payments made upon the cost of each vessel in excess of 25% of the statutory sales price thereof as of March 8, 1946 (See note)
Fairisle	July 31, 1942	\$ 1,950,604.54
Fairland	Aug. 31, 1942	1,848,013.88
Raphael Semmes	Oct. 30, 1942	1,861,403.30
Blenville	May 31, 1943	1,340,765.50
Azalea City	July 2, 1943	1,376,808.32
Warrior	July 26, 1943	180,759.32
Jean Lafitte	Sept. 10, 1943	(29,550.00)
Afoundria	Nov. 11, 1943	(41,188.73)
Wacosta	April 6, 1944	(44,915.18)
Yaka	Sept. 22, 1944	29,402.31
Hastings	Nov. 17, 1944	30,706.03
Madaket	Jan. 19, 1945	33,046.21
Andrew Jackson	Mar. 23, 1945	32,794.97
City of Alma	May 4, 1945	40,093.54
Kyska	Nov. 9, 1945	-
Maiden Creek	Jan. 5, 1946	-
Fairport	Feb. 27, 1946	37,477.58
John B. Waterman	Mar. 11, 1946	80,011.61
		<u>\$ 8,726,233.20</u>

Note: Cash payments made on the cost of certain vessels designated above by an asterisk (*) in accordance with provisions of Section 112 f of the Internal Revenue Code relating to involuntary conversions in excess of 25% of the adjusted statutory sales price are not included.

EXHIBIT E

ATTACHED TO AND MADE A PART OF INTERIM AGREEMENT BETWEEN
WATERMAN STEAMSHIP CORPORATION AND THE UNITED STATES MARITIME COMMISSION

(a) Name of the Vessel	(b) Cost of Vessel to Applicant	(c) Amount of Allowance of credit made by Commission on exchange of vessel on purchase of any vessel	(d) Excess of the cost of the vessel to applicant over amount of allowance of credit	(e) Amount equal to interest at 3 1/2% per annum from date of delivery of vessel to and including Mar. 7, 1946	(f) Interest accrued and unpaid on original mort- gage indebted- ness up to and including Mar. 7, 1946	(g) Net amount of interest to be credited to applicant
Fairisle	\$ 3,023,805.28		\$ 3,023,805.28	\$ 381,289.40	\$ 2,856.99	\$ 378,432.41
Fairland	3,036,211.74		3,036,211.74	373,828.37	723.10	373,105.27
Raphael Semmes	3,045,258.66		3,045,258.66	357,421.58	11,606.34	345,815.24
Blenville	3,000,000.00		3,000,000.00	290,835.61	13,309.15	277,526.46
Azalea City	3,001,657.44		3,001,657.44	281,785.74	10,051.66	271,734.08
Warrior	2,991,127.82	\$ 560,000.00	2,431,127.82	222,631.35	8,469.64	214,161.71
Jean Lafitte	2,808,924.50	676,000.00	2,132,924.50	185,915.05	33,131.44	152,783.61
Alfoundria	2,698,763.77	686,900.00	2,011,863.77	163,401.91	20,828.52	142,573.39
Wacosta	2,660,167.32	686,700.00	1,973,469.32	132,654.99	27,409.72	105,245.27
Yaka	2,615,102.31		2,615,102.31	133,406.03	30,210.41	103,195.62
Hastings	2,642,706.03		2,642,706.03	120,623.24	20,359.91	100,263.33
Madaket	2,641,046.21		2,641,046.21	104,592.67	8,735.87	95,806.80
Andrew Jackson	2,691,194.97		2,691,194.97	90,320.93	31,186.74	59,134.19
City of Alma	2,626,493.54		2,626,493.54	77,571.49	22,440.01	55,131.48
Kyska	2,442,739.51		2,442,739.51	27,874.00	20,590.49	7,283.51
Maiden Creek	2,417,358.53		2,417,358.53	14,382.39	10,576.92	3,805.47
Fairport	2,450,070.78		2,450,070.78	2,114.44	1,850.13	264.31
	<u>\$46,792,630.41</u>	<u>\$2,609,600.00</u>	<u>\$44,183,030.41</u>	<u>\$2,960,649.19</u>	<u>\$ 274,337.04</u>	<u>\$2,685,282.15</u>

EXHIBIT F

ATTACHED TO AND MADE A PART OF INTERIM AGREEMENT BETWEEN
WATERMAN STEAMSHIP CORPORATION AND THE UNITED STATES MARITIME COMMISSION

(a)	(b)	(c)	(d)
<u>Name of Vessel so exchanged</u>	<u>Date on which vessels so ex- changed were delivered to the Commission</u>	<u>Date on which the payment of charter hire would have ceased</u>	<u>The amount that would have been paid by the United States to the applicant as charter hire for the use of the vessel under any charter party made prior to March 9, 1946</u>
West Kyska	Aug. 26, 1943	Mar. 1, 1946	\$ 314,756.46
Lafayette	Aug. 12, 1943	Mar. 7, 1946	423,963.72
Arizpa	Sept. 23, 1943	Mar. 1, 1946	365,711.99
Kofresi	Sept. 23, 1943	Mar. 7, 1946	<u>365,128.86</u>
			<u>\$ 1,469,563.03</u>

EXHIBIT C

ATTACHED TO AND MADE A PART OF INTERIM AGREEMENT BETWEEN
WATERMAN STEAMSHIP CORPORATION AND THE UNITED STATES MARITIME COMMISSION

(a) Taxable year	(b) Taxable net income re- ported by applicant	(c) s. Amounts paid by United States to applicant as charter hire for use of the ves- sels under charter parties between applicant and the Commission being treated as not having been re- ceived or accrued as income	(d) Amount of depreciation and/or amortization treated as not having been allowed or allowable	(e) Net reduc- tion in taxable net income as provided in Sec. 9(c)(1)	(f) Adjusted taxable net income	(g) Federal taxes paid by applicant	(h) Federal taxes payable after giving effect to net reduc- tion in tax- able net income	(i) The amount of overpay- ment of Federal taxes
Fiscal years ended Sept. 30-								
1942	\$11,133,278.32	\$ 73,406.25	\$ 154,216.01	\$ (80,809.76)	\$11,214,088.08	\$4,872,384.13	\$5,232,506.79	\$(359,622.66)
1943	545,068.40	1,371,582.83	2,152,022.52	(780,439.69)	1,325,508.09	159,718.13	471,880.00	(312,161.87)
1944	3,261,464.56	3,598,450.50	3,581,118.17	17,332.33	3,244,132.23	932,592.63	910,794.09	21,798.54
1945	2,225,627.74	5,277,443.82	4,366,927.48	910,521.34	1,315,106.40	1,313,502.37	514,575.43	798,626.94
Three months ended Oct. 31, 1945*	437,824.84	1,521,369.36	1,046,380.50	474,988.86	(37,164.02)	<u>237,007.07</u>	<u>-</u>	<u>237,007.07</u>
						<u>\$7,515,704.33</u>	<u>\$7,129,856.31</u>	<u>\$ 385,848.02</u>
								<u>38,584.80</u>
								<u>\$ 347,263.22</u>

* Permission granted by Commissioner of Internal Revenue to change from fiscal year to calendar year.

EXHIBIT H

ATTACHED TO AND MADE A PART OF INTERIM AGREEMENT BETWEEN
WATERMAN STEAMSHIP CORPORATION AND THE UNITED STATES MARITIME COMMISSION

(a) Name of the Vessel	(b) Number of charter agreements under which vessel was chartered to the United States	(c) All amounts paid by the United States to applicant as charter hire for use of the vessel (exclusive of service, if any required under the terms of the charter) for the period up to and including March 7, 1946
Fairisle	WSA 2733R WSA 7907	\$ 256,693.30 1,210,357.96
Fairland	WSA 2732R WSA 7908	320,491.85 1,053,041.69
Raphael Semmes	WSA 3411R WSA 7906	173,287.43 1,224,280.47
Blenville	WSA 7559	1,246,412.13
Azalea City	WSA 7554	1,206,737.23
Warrior	WSA 7556	1,173,964.13
Jean Lafitte	WSA 7553	1,050,047.96
Afoundria	WSA 7555	940,027.00
Wacosta	WSA 7557	765,806.27
Yaka	WSA 8723	572,335.15
Hastings	WSA 8884	517,732.52
Madaket	WSA 9148	440,613.36
Andrew Jackson	WSA 9504	386,748.52
City of Alma	WSA 9729	331,969.89
Kyska	WSA 10252	120,345.08
Maiden Creek	WSA 12695	67,713.42
		<u>\$13,058,605.36</u>

EXHIBIT I

ATTACHED TO AND MADE A PART OF INTERIM AGREEMENT BETWEEN
WATERMAN STEAMSHIP CORPORATION AND THE UNITED STATES MARITIME COMMISSION

(a) Name of the Vessel	(b) Amount of pay- ments made by Applicant on account of cost of vessel under the provisions of Section 112(f) of the Internal Revenue Code relating to in- voluntary conversions	(c) The amount representing 25% of the adjusted sta- tutory sales price of the vessels	(d) The amount by which the payments under the provisions of Section 112(f) of the Internal Revenue Code exceed 25% of the adjusted statutory sales price
Yaka	\$ 699,164.46	\$ 245,625.87	\$ 453,538.59
Hastings	699,164.46	247,841.49	451,322.97
Madaket	699,164.46	250,334.07	448,830.39
Andrew Jackson	699,164.46	252,826.64	446,337.82
City of Alma	699,164.47	254,488.36	444,676.11
Kyska	638,291.00	261,720.89	376,570.11
Maiden Creek	638,291.00	263,770.55	374,520.45
	<hr/>	<hr/>	<hr/>
	\$4,772,404.31	\$1,776,607.87	\$2,995,796.44
	<hr/>	<hr/>	<hr/>

EXHIBIT J

ATTACHED TO AND MADE A PART OF INTERIM AGREEMENT BETWEEN
WATERMAN STEAMSHIP CORPORATION AND THE UNITED STATES MARITIME COMMISSION

- (a) The total of the cash payments made upon the cost of
vessels to the Applicant in excess of 25% of the
statutory sales price of the vessel, prior to
March 8, 1946 (See Exhibit D) \$ 8,726,233.20
- (b) The total amount equal to interest at the rate of
3½ per annum on the cost of the vessel to
Applicant, less the amount of any allowance of
credit made by the Commission on a vessel
exchanged on the original purchase of the
vessel (See Exhibit E) 2,686,262.15
- (c) The total amount that would have been paid by the
United States as charter hire for bareboat use
of the vessels exchanged by the Applicant on
the original purchase of our vessels (See Exhibit F) 1,469,563.03
- (d) The total amount of overpayment of Federal taxes by
Applicant (See Exhibit G) 347,263.22
\$13,229,321.60
- (e) The total amount paid by the United States to Appli-
cant as charter hire for the use of the vessels
(See Exhibit H) 13,058,605.36
- (f) The net credit to the Applicant on account of such
adjustment \$ 170,716.24
-

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Exhibit S-2.

U. S. DEPARTMENT OF COMMERCE
Maritime Administration
Washington 25, D. C.

ADDRESS REPLY TO
MARITIME ADMINISTRATION
and Refer to File No. 14-64

January 3, 1951

WATERMAN STEAMSHIP CORPORATION
61 ST. JOSEPH STREET
MOBILE 13, ALABAMA

Attention: Mr. C. R. Wade,
Controller

Subject: Adjustments under Section 9 of the
Merchant Ship Sales Act of 1946

Gentlemen:

This will acknowledge the receipt of your letter dated December 21, 1950 transmitting fifteen copies of amended "Exhibit I" with respect to "Readjusted Trade-in Allowance on Vessels" which relates to the figures shown in application for the further adjustment filed with the former Maritime Commission on May 28, 1948.

In accordance with the understanding of the conference held in my office on December 14, 1950, and the revised information furnished by you in connection with the traded-in vessels, we are submitting for your review and concurrence revised Schedules No. I through VII which reflect the final adjustment with respect to each of the 18 vessels involved, before taking into account any overpayment or deficiency in Federal taxes resulting from the application of Section 9(c)(1) of the Act, to be furnished by the Bureau of Internal Revenue.

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We propose to submit our recommendation to the Administrator on the basis of the computations contained in the attached schedules as soon as practicable, therefore, it will be appreciated if you will let us have your concurrence as soon as convenient.

Very truly yours,

L. C. SMITH
/L. C. Smith
Chief
Division of Claims

Enclosures

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Schedules

(Opposite )

WATERMAN STEAMSHIP CORPORATION

SCHEDULE 1

DESCRIPTION OF VESSELS COVERED BY APPLICATION No. 2109-D FOR ADJUSTMENT FOR PRIOR SALES TO
CITIZENS UNDER SECTION 9 OF THE MERCHANT SHIP SALES ACT OF 1946

<u>Name of Vessel</u>	<u>Official Number</u>	<u>U.S.N.C. Number</u>	<u>Type</u>	<u>(Non subsidy) Purchase Contract</u>		<u>Date of Orig. Del. to Owner</u>	<u>Construction Contract</u>	
				<u>No.</u>	<u>Date</u>		<u>No.</u>	<u>Date</u>
Fairisle	241970	850	02-SB-A1	WCo-2755	4-22-42	7-31-42	WCo-2662	4-3-42
Fairland	242073	472	"	" 8136	8-27-42	8-31-42	" 1709	8-28-41
Raphael Semmes	242074	473	"	" 8702	10-24-42	10-30-42	" 1710	"
Sienville	243438	478	"	" 13585	2-3-43	5-31-43	" 1715	"
Asalea City	243036	477	"	" 13584	2-3-43	7-2-43	" 1714	"
Warrior	243815	479	"	" 17589	7-16-43	7-26-43	" 1716	"
Jean LaFitte	243814	480	"	" 17823	7-22-43	9-10-43	" 1717	"
Afoundria	244018	482	"	" 17824	7-22-43	11-11-43	" 1719	"
Wacoeta	245169	1602	"	" 17826	7-22-43	4-6-44	" 13622	1-21-43
Yaka	246335	1605	"	" 31164	8-14-44	9-22-44	" 13625	"
Hastings	246617	1606	"	" 31165	"	11-17-44	" 13626	"
Madaket	246992	1607	"	" 31166	"	1-19-45	" 13627	"
Andrew Jackson	247303	1608	"	" 31167	"	3-23-45	" 13628	"
City of Alma	247592	1609	"	" 31168	"	5-4-45	" 13629	"
Zyska	248659	1612	"	" 40637	11-2-45	11-9-45	" 13632	"
Malden Creek	248998	1613	"	" 40638	11-2-45	1-5-46	" 13633	"
Fairport	249072	1614	"	" 40639	11-2-45	2-27-46	" 13634	"
John B. Waterman	249234	2826	"	" 42006	2-27-46	3-11-46	" 34769	6-19-45

WJR/cog
12-1-50

WATERMAN STEAMSHIP CORPORATION

SCHEDULE II

Sheet 1 of 6

ADJUSTMENT FOR PRIOR SALES TO CITIZENS UNDER SECTION 9 OF THE MERCHANT SHIP SALES ACT OF 1946

<u>CREDITS TO OWNER</u>	<u>SS YAKA</u>	<u>SS HASTINGS</u>	<u>SS KADAKET</u>	<u>SS ANDREW JACKSON</u>	<u>SS CITY OF ALMA</u>	<u>SS KYSKA</u>
1. Original purchase price (Sch. III)	\$2,615,102.31	2,642,706.03	2,641,046.21	2,691,194.97	2,626,493.54	2,442,739.51
Less: Original trade-in allowance	-0-	-0-	-0-	-0-	-0-	-0-
Less: Bal. of original stge. at 3-8-46	<u>1,886,535.54</u>	<u>1,412,835.54</u>	<u>1,408,835.54</u>	<u>1,959,235.54</u>	<u>1,887,235.53</u>	<u>1,804,448.51</u>
Cash payments made on original purchase price from general funds	29,402.31 ✓	30,706.03 ✓	33,046.21 ✓	32,794.97 ✓	40,093.54 ✓	-0-
Cash payments on original purchase price from general funds from (Sec. 112(f))	<u>699,164.46 ✓</u>	<u>699,164.46 ✓</u>	<u>699,164.46 ✓</u>	<u>699,164.46 ✓</u>	<u>699,164.47 ✓</u>	<u>638,291.00 ✓</u>
Total cash payments to 3-8-46	<u>728,566.77 ✓</u>	<u>729,870.49 ✓</u>	<u>732,210.67 ✓</u>	<u>731,959.43 ✓</u>	<u>739,258.01 ✓</u>	<u>638,291.00 ✓</u>
2. Less: 25% of adjusted statutory sales price (Sch. IV)	<u>244,083.94 ✓</u>	<u>246,319.50 ✓</u>	<u>248,832.25 ✓</u>	<u>251,345.00 ✓</u>	<u>253,020.17 ✓</u>	<u>261,786.80 ✓</u>
Less: Bal. of Sec. 112(f) funds	<u>455,078.52 ✓</u>	<u>452,844.96 ✓</u>	<u>450,332.21 ✓</u>	<u>447,819.46 ✓</u>	<u>446,144.30 ✓</u>	<u>376,504.29 ✓</u>
3. Credit for excess cash payments from general funds	29,402.31 ✓	30,706.03 ✓	33,046.21 ✓	32,794.97 ✓	40,093.54 ✓	-0-
4. Add: Interest Credit (Sch. III)	103,195.62 ✓	100,263.33 ✓	95,806.80 ✓	59,134.19 ✓	55,131.48 ✓	7,283.51 ✓
5. Add: Charter hire that would have been paid on vessels traded-in (Sch. VI)	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
6. Total credit to Owner	132,597.93	130,969.36	128,853.01	91,929.16	95,225.02	7,283.51
<u>CREDITS TO MARITIME ADMINISTRATION</u>						
7. Charter hire paid by U. S. Government (Sch. VI)	<u>572,335.15 ✓</u>	<u>517,732.52 ✓</u>	<u>440,613.36 ✓</u>	<u>386,748.52 ✓</u>	<u>331,969.83 ✓</u>	<u>120,345.08 ✓</u>
8. Net credit to Owner before tax adjustment	<u>(\$ 439,737.22)</u>	<u>(386,763.16)</u>	<u>(311,760.35)</u>	<u>(294,819.36)</u>	<u>(236,744.87)</u>	<u>(113,061.57)</u>

SCHEDULE 11
PAGE 2 OF 6

MORTGAGE ADJUSTMENT

	<u>SS YAKA</u>	<u>SS HASTINGS</u>	<u>SS MADAKET</u>	<u>SS ANDREW JACKSON</u>	<u>SS CITY OF ALMA</u>	<u>SS EYKA</u>
9. Adjusted statutory sales price (Sch. IV)	\$ 976,343.75	\$ 963,277.99	995,328.99	1,005,380.00	1,012,080.68	1,047,147.19
10. Less: 25% thereof treated as paid in cash as of 3-8-46	244,085.94	246,319.50	248,832.25	251,345.00	253,020.17	261,786.80
11. Less: Application of remaining Sec. 112(f) funds	455,078.52	452,844.96	450,332.21	447,819.46	446,144.30	376,504.20
12. Less: Readjusted trade-in allowance	-	-	-	-	-	-
13. Adjusted mortgage at 3-8-46	277,179.29	286,113.53	296,164.53	306,215.54	312,916.21	408,856.19
14. Balance of original mortgage at 3-8-46	1,826,535.54	1,912,835.54	1,908,535.54	1,959,235.54	1,927,235.53	1,804,448.51
15. Reduction in mortgage indebtedness	<u>1,609,356.25</u>	<u>1,626,722.01</u>	<u>1,612,671.01</u>	<u>1,653,020.00</u>	<u>1,574,319.32</u>	<u>1,395,592.32</u>

RECAPITULATION

16. Net credit to Owner before tax adjustment	(439,737.22)	(386,763.16)	(311,760.35)	(294,819.36)	(236,744.87)	(113,061.57)
17. Reduction in mortgage indebtedness	<u>1,609,356.25</u>	<u>1,626,722.01</u>	<u>1,612,671.01</u>	<u>1,653,020.00</u>	<u>1,574,319.32</u>	<u>1,395,592.32</u>
18. Total net credit to Owner before tax adjustment	<u>\$1,169,619.03</u>	<u>1,239,958.85</u>	<u>1,300,910.66</u>	<u>1,358,200.64</u>	<u>1,337,574.45</u>	<u>1,282,530.75</u>
19. MEMORANDUM: Excess charter hire on and after 3-8-46 to be refunded by Owner	<u>\$ 18,377.40</u>	<u>17,791.40</u>	<u>22,561.63</u>	<u>35,520.69</u>	<u>35,750.95</u>	<u>8,120.15</u>

*Payments made pursuant to provisions of Section 112(f), Involuntary Conversion, of the Internal Revenue Code.

SCHEDULE II
Sheet 1 of 6

CREDITS TO OWNER

1. Original purchase price (Sch. III)
Less: Original trade-in allowance
Less: Balance of original mtge. at 3-8-46
Cash payments made on original purchase price from general funds
Cash payments made on original purchase price from Sec. 112(f) funds
Total cash payments to 3-8-46
2. Less: 25% of adj. stat. sales price (Sch. IV)
Less: Balance of Sec. 112(f) funds

3. Credit for excess cash payments from general funds

4. Add: Interest credit (Sch. III)

5. Add: Charter hire that would have been paid on vessels traded-in (Sch. VI)

6. Total credit to Owner

CREDITS TO MARITIME ADMINISTRATION

7. Charter hire paid by U. S. Gov't (Sch. VI)

8. Net credit to Owner before tax adjustment

	SS <u>MAIDEN CREEK</u>	SS <u>FAIRISLE</u>	SS <u>FAIRLAND</u>	SS <u>RAFAEL SINNER</u>	SS <u>BIRCHVILLE</u>	SS <u>AZALEA CITY</u>
1. Original purchase price (Sch. III)	\$2,419,158.53	3,023,805.28	3,036,211.74	3,045,258.66	3,000,000.00	3,001,657.44
Less: Original trade-in allowance	-0-	-0-	-0-	-0-	-0-	-0-
Less: Balance of original mtge. at 3-8-46	<u>1,779,067.53</u>	<u>827,621.24</u>	<u>942,618.36</u>	<u>938,273.66</u>	<u>1,416,260.00</u>	<u>1,379,269.62</u>
Cash payments made on original purchase price from general funds	1,800.00	2,196,184.04	2,093,593.38	2,106,982.80	1,583,720.00	1,622,387.82
Cash payments made on original purchase price from Sec. 112(f) funds	<u>638,291.00</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
Total cash payments to 3-8-46	<u>640,091.00</u>	<u>2,196,184.04</u>	<u>2,093,593.38</u>	<u>2,106,982.80</u>	<u>1,583,720.00</u>	<u>1,622,387.82</u>
2. Less: 25% of adj. stat. sales price (Sch. IV)	263,864.76	245,932.00	245,932.00	245,932.00	241,942.00	244,567.00
Less: Balance of Sec. 112(f) funds	<u>374,426.24</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
3. Credit for excess cash payments from general funds	1,800.00	1,959,252.04	1,847,661.38	1,861,050.80	1,341,778.00	1,377,820.82
4. Add: Interest credit (Sch. III)	3,805.47	378,432.41	373,105.27	345,815.24	277,526.46	271,734.08
5. Add: Charter hire that would have been paid on vessels traded-in (Sch. VI)	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
6. Total credit to Owner	5,605.47	2,328,684.45	2,220,766.65	2,206,866.04	1,619,304.46	1,649,554.90
7. Charter hire paid by U. S. Gov't (Sch. VI)	<u>67,713.42</u>	<u>1,598,089.77</u>	<u>1,526,393.95</u>	<u>1,485,494.56</u>	<u>1,246,412.13</u>	<u>1,206,737.23</u>
8. Net credit to Owner before tax adjustment	<u>62,107.95</u>	<u>730,594.68</u>	<u>694,372.70</u>	<u>721,371.48</u>	<u>372,892.33</u>	<u>442,817.67</u>

SCHEDULE II

Sheet 4 of 6

MORTGAGE ADJUSTMENT

9. Adjusted statutory sales price (Sch. IV)
10. Less: 25% thereof treated as paid
in cash 3-8-46
11. Less: Application of remaining
Section 112(f) funds
12. Less: Readjusted trade-in allowance
13. Adjusted mortgage at 3-8-46
14. Balance of original mortgage at 3-8-46
15. Reduction in mortgage indebtedness

88 <u>MAIDEN CREEK</u>	89 <u>FAIRBORN</u>	88 <u>FAIRLAND</u>	88 <u>RAPHAEL SEMMES</u>	88 <u>BIRDSVILLE</u>	88 <u>AZALEA OIT</u>
31,055.459.05	983,728.00	983,728.00	983,728.00	967,768.00	978,268.00
263,864.76	249,932.00	249,932.00	249,932.00	241,942.00	244,567.00
374,426.24	-0-	-0-	-0-	-0-	-0-
-0-	-0-	-0-	-0-	-0-	-0-
417,168.05	737,796.00	737,796.00	737,796.00	725,826.00	733,701.00
1,779,067.53	827,621.24	942,618.36	938,275.85	1,416,260.00	1,379,269.62
81,361,899.48	89,825.24	204,822.36	200,479.86	690,454.00	645,568.62

RECAPITULATION

16. Net credit to Owner before tax adjustment
17. Reduction in mortgage indebtedness
18. Total net credit to Owner before tax adj't.
19. MEMORANDUM: Excess charter hire on and after
3-8-46 to be refunded by Owner

(62,107.95) / 730,594.68	694,372.70	721,371.48	372,892.33	442,817.67
1,361,899.48	89,825.24	204,822.36	200,479.86	690,454.00
81,299,791.53	820,419.92	849,195.06	921,851.34	1,063,346.33
25,887.67	8,031.39	7,342.47	57,526.71	54,083.59
				(879.50)

* Payments made pursuant to provisions of Section 112(f)
Involuntary Conversion, of the Internal Revenue Code.

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12-1-50

CREDITS TO OWNER

1. Original purchase price (Sch. III)
Less: Original trade-in allowance
Less: Bal. of original mortgage
at 3-8-46
Cash payments made on original
pur. price from general funds
Cash payments made on orig. pur.
price from Sec. 112(f) funds
Total cash payments to 3-8-46
2. Less: 25% of adj. stat. sales Fr. (Sch. IV)
Less: Bal. of Sec. 112(f) funds
3. Credit for excess cash payments
from general funds
4. Add: Interest Credit (Sch. III)
5. Add: Charter hire that would have been
paid on vessels traded-in (Sch. VI)
6. Total credit to Owner

	SS JOHN B.	SS	SS	SS	SS	SCHEDULE II Sheet 5 of 6
	SS FAIRPORT	WATERMAN	SS WARRIOR	JEAN LAPITTE	AFONDRIA	WAGGERSA
	\$2,450,070.78	2,788,336.61	2,991,127.82	2,808,924.50	2,698,763.77	2,660,169.32
	-0-	-0-	560,000.00	676,000.00	686,900.00	686,700.00
	2,450,070.78	2,788,336.61	2,431,127.82	2,132,924.50	2,011,863.77	1,973,469.32
	306,270.78	349,136.61	423,713.82	213,404.50	201,765.77	198,039.32
	-0-	-0-	-0-	-0-	-0-	-0-
	306,270.78	349,136.61	423,713.82	213,404.50	201,765.77	198,039.32
	268,918.05	269,250.00	241,942.00	241,942.00	241,942.00	241,942.00
	-	-	-	-	-	-
	37,352.73	79,886.61	181,771.82	(28,537.50)	(40,176.23)	(43,902.68)
	264.31	-	214,161.71	152,783.61	142,573.39	105,245.27
	-	-	322,103.23	431,736.34	372,717.86	368,567.15
	37,617.04	79,886.61	718,036.76	555,982.45	475,115.02	429,903.74

CREDITS TO MARITIME ADMINISTRATION

7. Charter hire paid by U. S. Gov't. (Sch. VI)
8. Net credit to Owner before tax Adjustm't.

	-0-	-0-	1,173,954.13	1,050,047.96	940,027.00	765,806.27
	37,617.04	79,886.61	(855,927.37)	(494,065.51)	(464,911.98)	(335,536.53)

WATERMAN STEAMSHIP CORPORATION

SCHEDULE 11
Sheet 6 of 6

DETERMINATION OF READJUSTED TRADE-IN ALLOWANCE PURSUANT TO SECTION 9 (b)(7) OF THE ACT

<u>MORTGAGE ADJUSTMENT</u>	<u>SS FAIRPORT</u>	<u>SS JOHN B. WATERMAN</u>	<u>SS WARMIOR</u>	<u>SS JEAN LAFITTE</u>	<u>SS APOURVIA</u>	<u>SS YACOSTA</u>	<u>TOTAL</u>
9. Adjusted stat. sales price (Sch. IV)	\$1,075,672.19	1,077,000.00	967,768.00	967,768.00	967,768.00	967,768.00	17,997,981.84
10. Less: 25% thereof treated as paid in cash 3-8-46	268,918.05	269,250.00	241,942.00	241,942.00	241,942.00	241,942.00	1,499,495.47
11. Less: application of remaining Sec. 112(f) funds	-0-	-0-	-0-	-0-	-0-	-0-	3,003,149.89 ^{OK}
12. Less: Readjusted trade-in allowance	-0-	-0-	75,320.00 ^{OK}	52,025.00 ^{OK}	79,236.00 ^{OK}	104,975.44 ^{OK}	312,557.44
13. Adjusted mortgage at 3-8-46	806,754.14	807,750.00	649,506.00	673,801.00	646,550.00	620,849.56	10,182,779.04
14. Balance of original mortgage 3-8-46	2,143,802.00	2,439,200.00	2,007,414.00	1,919,520.00	1,810,895.00	1,775,410.00	10,737,729.81 ^{OK}
15. Reduction in mortgage indebtedness	<u>1,337,045.86</u>	<u>1,631,450.00</u>	<u>1,357,908.00</u>	<u>1,245,719.00</u>	<u>1,164,308.00</u>	<u>1,154,560.44</u>	<u>20,554,941.77</u>
<u>RECAPITULATION</u>							
16. Est credit to Owner before tax adjustment	37,617.04	79,886.61	(455,927.37)	(494,065.51)	(464,911.98)	(335,896.93)	(516,243.36)
17. Reduction in mortgage indebtedness	<u>1,337,045.86</u>	<u>1,631,450.00</u>	<u>1,357,908.00</u>	<u>1,245,719.00</u>	<u>1,164,308.00</u>	<u>1,154,560.44</u>	<u>20,554,941.77</u>
18. Total net credit to Owner before tax adjustment	<u>\$1,374,662.90</u>	<u>1,711,336.61</u>	<u>901,980.63</u>	<u>751,653.49</u>	<u>699,396.02</u>	<u>818,663.91</u>	<u>20,038,698.51</u>
19. MEMORANDUM: Excess charter hire on and after 3-8-46 to be refunded by Owner	<u>-0-</u>	<u>-0-</u>	<u>29,582.97</u>	<u>8,898.18</u>	<u>12,950.66</u>	<u>26,829.02</u>	<u>368,377.38</u> ^{OK}

Payments made pursuant to provisions of Section 112(f)
Involuntary Conversion, of the Internal Revenue Code.

NATHAN STEAMSHIP CORPORATION

SCHEDULE III
Sheet 1 of 3

**DETERMINATION OF CREDIT TO APPLICANT FOR AN AMOUNT EQUAL TO INTEREST AT 3 1/2 PER CENTUM
PER ANNUM FROM DATE OF DELIVERY TO MARCH 8, 1946 PURSUANT TO SECTION 9(b)(5)**

	SS <u>FAIRISLE</u>	SS <u>FAIRLAND</u>	SS <u>NAPHAEL SNOWES</u>	SS <u>BLENVILLE</u>	SS <u>AZALEA CITY</u>	SS <u>MARRION</u>
Original purchase price	\$3,023,805.28	3,036,211.74	3,045,258.66	3,000,000.00	3,001,657.44	2,991,127.82
Less original trade-in allowance	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>560,000.00</u>
Original purchase price less orig. trade-in allowance	<u>\$3,023,805.28</u>	<u>3,036,211.74</u>	<u>3,045,258.66</u>	<u>3,000,000.00</u>	<u>3,001,657.44</u>	<u>2,431,127.82</u>
Date of delivery	7-31-42	8-31-42	10-30-42	5-31-43	7-2-43	7-26-43
Number of days from delivery to March 8, 1946	1315	1284	1224	1011	979	955
Daily rate of interest at 3 1/2 per annum on the original purchase price less original trade-in allowance	\$ 289.9563	291.14360	292.01111	287.67124	287.83017	233.12125
Amount of interest credited to Owner	\$ 381,289.40	373,828.37	357,421.58	290,835.61	281,785.74	222,631.35
Less interest on the original mortgage indebtedness accrued to March 8, 1946 and unpaid	<u>2,856.99</u>	<u>723.10</u>	<u>11,606.34</u>	<u>13,309.15</u>	<u>10,051.66</u>	<u>8,469.64</u>
Net interest credit to Owner	<u>\$ 378,432.41</u>	<u>373,105.27</u>	<u>345,815.24</u>	<u>277,526.46</u>	<u>271,734.08</u>	<u>214,161.71</u>

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12-1-90

SCHEDULE III
Sheet 2 of 3

	SS <u>JEAN LAFITTE</u>	SS <u>ATOUNERIA</u>	SS <u>MACOSTA</u>	SS <u>IAXA</u>	SS <u>HASTINGS</u>	SS <u>MATAKET</u>
Original purchase price	\$2,808,924.50	2,698,763.77	2,660,169.32	2,615,102.31	2,642,706.03	2,641,046.21
Less: Original trade-in allowance	<u>676,000.00</u>	<u>686,900.00</u>	<u>686,700.00</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
Original purchase price less original trade-in allowance	<u>2,132,924.50</u>	<u>2,011,863.77</u>	<u>1,973,469.32</u>	<u>2,615,102.31</u>	<u>2,642,706.03</u>	<u>2,641,046.21</u>
Date of delivery	9-10-43	11-11-43	4-6-44	9-22-44	11-17-44	1-9-45
Number of days from date of delivery to March 8, 1946	909	847	701	532	476	413
Daily rate of interest at 3 1/2 per annum on the original trade-in allowance	204.52701	192.91845	189.23679	259.76324	253.41017	253.25101
Amount of interest credited to Owner	185,915.05	163,401.91	132,654.99	133,406.03	120,623.24	104,592.67
Less: Interest on the original mortgage indebtedness accrued to March 8, 1946 and unpaid	<u>33,131.44</u>	<u>20,828.52</u>	<u>27,409.72</u>	<u>30,210.41</u>	<u>20,359.91</u>	<u>8,785.87</u>
Net interest credit to Owner	<u>\$ 152,783.61</u>	<u>142,573.39</u>	<u>105,245.27</u>	<u>103,195.62</u>	<u>100,263.33</u>	<u>95,806.80</u>

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SCHEDULE III
Sheet 3 of 3

	SS ANDRE JACKSON	SS CITY OF ALMA	SS KYSKA	SS MAIDEN CREEK	SS FAIRPORT	SS JOHN B. WATERMAN	TOTAL ALL VESSELS
Original purchase price	\$2,691,194.97	2,626,493.54	2,442,739.51	2,419,158.53	2,450,070.78	2,788,336.61	49,582,767.02
Less:							
Original trade-in allowance	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>2,609,600.00</u>
Original purchase price less orig. trade-in allowance	<u>\$2,691,194.97</u>	<u>2,626,493.54</u>	<u>2,442,739.51</u>	<u>2,419,158.53</u>	<u>2,450,070.78</u>	<u>2,788,336.61</u>	<u>46,973,167.02</u>
Date of delivery	3-23-45	3-4-45	11-7-45	1-5-46	2-27-46	3-11-46	
Number of days from delivery to March 8, 1946	350	308	119	62	9	-0-	
Daily rate of interest at $3\frac{1}{2}\%$ per annum of the original pur- chase price less original trade-in allowance	258.05980	251.85555	234.23530	231.97410	234.93830	-0-	
Amount of interest credited to Owner	90,320.93	77,571.49	27,874.00	14,362.39	2,114.44	-0-	2,960,649.19
Less interest on the original mortgage indebtedness accrued to March 8, 1946 and unpaid	<u>31,186.74</u>	<u>22,440.01</u>	<u>30,590.49</u>	<u>10,576.92</u>	<u>1,850.13</u>	<u>-0-</u>	<u>274,387.04</u>
Net interest credit to Owner	<u>\$ 59,134.19</u>	<u>55,131.48</u>	<u>7,283.51</u>	<u>3,805.47</u>	<u>264.31</u>	<u>-0-</u>	<u>2,686,262.15</u>

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12-1-50

WATERMAN STEAMSHIP CORPORATION

SCHEDULE IV

Sheet 1 of 3

**UNADJUSTED STATUTORY SALES PRICE ADJUSTED FOR DESIRABLE FEATURES, LACK OF STANDARD FEATURES
AND DEPRECIATION**

	<u>SS FAIRISLE</u>	<u>SS FAIRLAND</u>	<u>SS RAPHAEL SEMMES</u>	<u>SS BIENVILLE</u>	<u>SS AZALEA CITY</u>	<u>SS WARRICK</u>
Unadjusted statutory sales price (Standard Vessel)	\$1,050,000.00	1,050,000.00	1,050,000.00	1,050,000.00	1,050,000.00	1,050,000.00
Add - Desirable feature No. 1	15,000.00	15,000.00	15,000.00	15,000.00	15,000.00	15,000.00
2	11,000.00	11,000.00	11,000.00	-	-	-
3	-	-	-	7,300.00	7,300.00	7,300.00
4	12,500.00	12,500.00	12,500.00	-	12,500.00	-
Deduct - Lack of standard feature No. 1	11,500.00	11,500.00	11,500.00	11,500.00	11,500.00	11,500.00
2	-	-	-	2,300.00	2,300.00	2,100.00
Price adjusted for features	\$1,077,000.00	1,077,000.00	1,077,000.00	1,058,500.00	1,071,000.00	1,058,500.00
Depreciation - Normal	194,007.52	189,433.97	180,581.91	146,595.00	143,631.37	138,475.00
War-Service	48,465.00	48,465.00	24,232.50	23,816.25	24,097.50	21,816.25
Total depreciation	\$ 242,472.52	237,898.97	204,814.41	170,411.25	167,728.87	162,291.25
Price adjusted for features and depreciation	\$ 834,527.48	839,101.03	872,185.59	888,088.75	903,271.13	896,208.75
Price Floor - Standard Vessel	\$ 957,818.00	957,818.00	957,818.00	957,818.00	957,818.00	957,818.00
Add - Price floor desir. feat. No. 1	14,000.00	14,000.00	14,000.00	14,000.00	14,000.00	14,000.00
2	10,030.00	10,010.00	10,010.00	-	-	-
3	-	-	-	6,650.00	6,650.00	6,650.00
4	10,500.00	10,500.00	10,500.00	-	10,500.00	-
Deduct - Lack of std. feat. No. 1	8,600.00	8,600.00	8,600.00	8,600.00	8,600.00	8,600.00
2	-	-	-	2,100.00	2,100.00	2,100.00
Price floor adjusted for features	\$ 981,728.00	983,728.00	983,728.00	967,768.00	978,268.00	967,768.00

*As determined and furnished by the former Bureau of Engineering.

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SCHEDULE IV
Sheet 2 of 3

	SS JEAN BAPTISTE	SS ANTONELLA	SS MAGGIE	SS YAKA	SS MARTINE	SS EMMETT
Unadjusted statutory sales price (Standard Vessel)	\$1,050,000.00	1,050,000.00	1,050,000.00	1,050,000.00	1,050,000.00	1,050,000.00
Add - desirable feature No. 1	15,000.00	15,000.00	15,000.00	15,000.00	15,000.00	15,000.00
2						
3	7,300.00	7,300.00	7,300.00	7,300.00	7,300.00	7,300.00
4						
Deduct - lack of std. feat. No. 1	11,500.00	11,500.00	11,500.00	11,500.00	11,500.00	11,500.00
2	2,300.00	2,300.00	2,300.00	2,300.00	2,300.00	2,300.00
Price adjusted for features	\$1,058,500.00	1,058,500.00	1,058,500.00	1,058,500.00	1,058,500.00	1,058,500.00
Depreciation - Normal	\$ 131,805.00	122,815.00	101,644.99	77,140.00	69,020.00	59,885.00
War-service	10,585.00	10,585.00	10,585.00	5,016.25	4,202.01	1,286.01
Total depreciation	\$ 142,390.00	133,400.00	112,229.99	82,156.25	73,222.01	61,171.01
Price adjusted for features and depreciation	<u>\$ 916,110.00</u>	<u>925,100.00</u>	<u>946,270.01</u>	<u>976,343.75</u>	<u>985,277.99</u>	<u>997,328.99</u>
Price Floor - Standard Vessel	\$ 957,818.00	957,818.00	957,818.00	957,818.00	957,818.00	957,818.00
Add - Price floor desir. feat. No. 1	14,000.00	14,000.00	14,000.00	14,000.00	14,000.00	14,000.00
2						
3	6,650.00	6,650.00	6,650.00	6,650.00	6,650.00	6,650.00
4						
Deduct - lack of std. feat. No. 1	8,600.00	8,600.00	8,600.00	8,600.00	8,600.00	8,600.00
2	2,100.00	2,100.00	2,100.00	2,100.00	2,100.00	2,100.00
Price floor adjusted for features	<u>\$ 967,768.00</u>	<u>967,768.00</u>	<u>967,768.00</u>	<u>967,768.00</u>	<u>967,768.00</u>	<u>967,768.00</u>

As *As determined and furnished by the former Bureau of Engineering
WR/ocg 12-1-50

SCHEDULE IV
 Sheet 1 of 1
 SS JOHN B.
 WATSONMAN

	SS ANTHONY JACKSON	SS GIFT OF ALMA	SS KYSKA	SS MAIDEN CREEK	FAIRPORT	SS JOHN B. WATSONMAN
Unadjusted statutory sales price (Standard Vessel)	\$1,050,000.00	1,050,000.00	1,050,000.00	1,050,000.00	1,050,000.00	1,050,000.00
Add - Desirable feature No. 1	15,000.00	15,000.00	15,000.00	15,000.00	15,000.00	15,000.00
2	-	-	11,000.00	11,000.00	11,000.00	11,000.00
3	7,300.00	7,300.00	-	-	-	-
4	-	-	-	-	12,500.00	12,500.00
Deduct - Lack of std. feat. No. 1	11,500.00	11,500.00	11,500.00	11,500.00	11,500.00	11,500.00
2	2,300.00	2,300.00	-	-	-	-
Price adjusted for features	\$1,058,500.00	1,058,500.00	1,064,500.00	1,064,500.00	1,077,000.00	1,077,000.00
Depreciation - Normal	50,750.00	44,660.00	17,352.81	9,040.95	1,327.81	-
War-service	2,370.00	1,759.32	-	-	-	-
Total depreciation	\$ 53,120.00	46,419.32	17,352.81	9,040.95	1,327.81	-
Price adjusted for features and depreciation	<u>\$1,005,380.00</u>	<u>1,012,080.68</u>	<u>1,047,147.19</u>	<u>1,055,459.05</u>	<u>1,075,672.19</u>	<u>1,077,000.00</u>
Price Floor - Standard Vessel	957,818.00	957,818.00	957,818.00	957,818.00	957,818.00	957,818.00
Add - Price floor desir. feat. No. 1	14,000.00	14,000.00	14,000.00	14,000.00	14,000.00	14,000.00
2	-	-	10,019.00	10,010.00	10,010.00	10,010.00
3	6,650.00	6,650.00	-	-	-	-
4	-	-	-	-	10,500.00	10,500.00
Deduct - Lack of std. feat. No. 1	8,600.00	8,600.00	8,600.00	8,600.00	8,600.00	8,600.00
2	2,100.00	2,100.00	-	-	-	-
Price floor adjusted for features	<u>\$ 967,768.00</u>	<u>967,768.00</u>	<u>973,228.00</u>	<u>973,228.00</u>	<u>983,728.00</u>	<u>983,728.00</u>

* As determined and furnished
by the former Bureau of Engineering.

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NOTES ON RECEIPT OF CONTRIBUTION

RECEIPT

REDEMPTION OF TRADE-IN ALLOWANCE FOR VESSELS IN SECTION 1(b)(7) OF THE ACT

Traded-in vessels	WEST AFRICA	INDONESIA	AFRICA	EUROPE	TOTAL
Type	By Cargo	By Cargo	By Cargo	By Cargo	
Official Number	217224	219338	219800	219408	
Year built	1918	1919	1920	1920	
Deadweight tons (ADE)	8,480	11,194	8,804	8,000	
Date traded-in	8-26-43	8-24-43	8-24-43	9-25-43	
Original Trade-in Allowance	\$560,000.00	676,000.00	686,900.00	686,700.00	2,609,600.00
Reducted Trade-in Allowance	\$ 76,320.00	\$ 52,025.00	\$ 79,236.00	\$ 104,976.44	312,557.44
Allocation of Trade-in Allowance					
New vessels	SS HARRISON	SS JEAN LAZIER	SS ANTONIA	SS MAGNETA	
Allocation of original trade-in allowance to each new vessel (Schedule III)	560,000.00	676,000.00	686,900.00	686,700.00	2,609,600.00
Ratio of original allowances	100%	100%	100%	100%	
Amount of reducted trade-in allowance applied to each new vessel on same basis as original allowances (Schedule II)	\$ 76,320.00	\$ 52,025.00	\$ 79,236.00	\$ 104,976.44	312,557.44

* Statutory ceiling applies

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FAIRMAN STEAMSHIP CORPORATION

SCHEDULE VI
Sheet 1 of 2

CHARTER HIRE (FOR USE OF VESSEL) PURSUANT TO SECTION 9(b)(6) OF THE ACT

Vessel	Type Charter Hire	PERIOD		Amount	Total
		From	To		
Fairisle	Time	7-31-42	6-15-43	\$ 384,731.81	
"	Shareboat	6-15-43	3- 7-46	1,210,357.36	\$ 1,598,089.77
Fairland	Time	8-31-42	10- 3-43	273,352.26	
"	Shareboat	10- 3-43	3- 7-46	1,053,041.69	1,526,393.95
Raphael Semmes	Time	10-30-42	6- 2-43	261,214.09	
"	Shareboat	6- 2-43	3- 7-46	1,224,280.47	1,485,494.56
Nieville	"	5-31-43	"	1,246,412.13	1,246,412.13
Asalea City	"	7- 2-43	"		1,206,737.23
Warrior	"	7-26-43	"		1,173,964.13
Jean LaFitte	"	9-10-43	"		1,090,047.96
Aroundria	"	11-11-43	"		940,027.00
Wacoata	"	4- 6-44	"		765,806.27
Iska	"	9-22-44	"		972,335.15
Hastings	"	11-17-44	"		517,732.52
Madaket	"	1-19-45	"		440,613.36
Andrew Jackson	"	3-23-45	"		386,748.52
City of Alma	"	5- 4-45	"		331,969.89
Kyaka	"	11- 9-45	"		120,345.08
Maiden Creek	"	1- 5-46	"		67,713.42
Fairport	None	"	"		-
John W. Hartman	"	"	"		-
TOTAL					<u>113,430,430.94</u>

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SCHEDULE VI
Sheet 2 of 2

<u>Vessel Traded-In</u>	<u>PERIOD</u>		<u>Total</u>
	<u>From</u>	<u>To</u>	
West Kyska	8-26-43	3-7-46	\$ 322,103.23
LaFayette	8-12-43	3-7-46	431,736.34
Arispa	9-24-43	3-7-46	372,717.86
Kofresi	9-25-43	3-7-46	<u>368,557.15</u>
Total Credit to Applicant			<u>\$1,495,124.58</u>

Charter hire for use that would have been paid on the traded-in vessels has been credited to the new vessels on the same basis that the trade-in allowances were applied to the new vessels as follows (Sch. II):

SS Warrior	\$ 322,103.23
" Jean LaFitte	431,736.34
" Afoundria	372,717.86
" Eacocta	<u>368,557.15</u>
Total	<u>\$1,495,124.58</u>

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NATHANAL STEAMSHIP CORPORATION

SCHEDULE VII
Sheet 1 of 2

EXCESS CHARTER HIRE OVER THAT REPRESENTING A RATE OF 15 PER CENTUM PER ANNUM OF THE ADJUSTED
STATUTORY SALES PRICE ACCRUED AND PAID ON AND AFTER MARCH 8, 1946 IN ACCORDANCE WITH SECTION
9(a)(2) OF THE ACT

Adjustment of charter hire paid on and after March 8, 1946 to date of redelivery

	<u>Redelivery Date</u>	<u>Statutory Sales Price at 3-8-46</u>	<u>Monthly Rate at Which Hire Was Paid</u>	<u>Monthly Rate of Hire at 15% of Stat. Sales Pr.</u>	<u>Excess Monthly Rate Paid</u>	<u>Amount Excess Hire Paid</u>
John	2-2-46	\$ 976,343.75	\$ 32,691.90	\$ 12,204.30	\$ 20,487.60	\$ 18,593.05
Hastings	4-3-46	985,277.99	33,033.83	12,315.98	20,717.85	18,111.42
Madaket	2-27-46	995,328.99	33,013.08	12,441.61	20,571.47	-0-
Andrew Jackson	4-28-46	1,005,380.00	33,639.94	12,567.25	21,072.69	35,982.18
City of Alma	5-1-46	1,012,080.68	32,831.17	12,651.01	20,180.16	36,210.37
Eyeka	3-23-46	1,047,147.19	30,534.24	13,089.34	17,444.90	9,003.82
Malden Creek	4-18-46	1,055,459.05	32,500.00	13,193.24	19,306.76	25,887.67
Fairisle	3-19-46	983,728.00	36,959.72	12,296.60	24,663.12	9,149.22
Fairland	3-18-46	983,728.00	36,139.26	12,296.60	23,842.66	8,460.30
Raphael Semmes	5-18-46	983,728.00	36,884.28	12,296.60	24,587.68	57,900.02
Pienville	5-11-46	967,768.00	37,500.00	12,097.10	25,402.90	54,083.59
Assala City	3-7-46	978,268.00	37,500.00	12,228.35	25,271.65	-0-
Warrior	4-12-46	967,768.00	37,389.10	18,097.10	25,292.00	29,697.70
Jean LaFitte	3-20-46	967,768.00	35,111.19	12,097.10	23,014.09	9,273.88
Afoundria	3-26-46	967,768.00	33,726.56	12,097.10	21,629.46	13,256.77
Uncosta	4-15-46	967,768.00	33,242.50	12,097.10	21,145.40	26,943.33
						<u>1352,554.32</u>

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SCHEDULE VII
Page 2 of 2

Adjustment of charter hire included in Redelivery Obligation Settlement

	<u>Number of days Allowed</u>	<u>Amount of Charter Hire Allowed</u>	<u>Allowance Based on 15% of Stat. Scale Price</u>	<u>Adjustment Due Applicant</u>	<u>Net Amount Due Maritime Administration</u>
Yaka	28	\$ 11,148.78	\$ 11,364.33	\$ 215.65	\$ 18,377.40
Hastings	28	11,161.65	11,481.67	320.02	17,731.40
Mudaket	28	30,389.80	7,826.17	(22,563.63)	22,563.63
Andrew Jackson	24	9,295.02	9,756.51	461.49	35,520.69
City of Alma	21	8,110.62	8,570.04	459.42	35,750.95
Kyaka	24	9,475.20	10,354.87	883.67	8,120.15
Maiden Creek	-	-	-	-	23,887.67
Fairisle	105	41,325.27	42,443.10	1,117.83	8,031.39
Fairland	105	41,325.27	42,443.10	1,117.83	7,342.67
Raphael Semmes	35	13,800.84	14,174.15	373.31	57,526.71
Bienville	-	-	-	-	54,083.59
Asalea City	105	41,196.54	42,076.04	879.50	(879.50)
Warrior	28	11,045.82	11,160.55	114.73	29,582.97
Jean LaFitte	95	37,372.95	37,754.65	381.70	8,898.18
Afoundrin	75	29,468.37	29,774.48	306.11	12,950.66
Vacosta	28	11,007.22	11,121.53	114.31	26,829.02
				<u>(815,818.06)</u>	<u>8368,377.38</u>

S U M M A R Y

Amount of excess hire paid after 3-8-46 - - - - \$352,559.32
 Net amount of excess hire allowed in
 Redelivery Obligation Settlement - - - - - 15,818.06
 Total refundable to Administration - - - - - 8368,377.38

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WATZMAN STEAMSHIP CORPORATION

Amounts credited to the Maritime Administration pursuant to section 9(b)(6) of the Merchant Ship Sales Act of 1946 by income-tax taxable years of the Applicant for each of the 18 vessels involved

Fiscal Years Ending September 30

<u>Vessel</u>	<u>1942</u>	<u>1943</u>	<u>1944</u>	<u>1945</u>	<u>1946*</u>	<u>Total</u>
Saka	\$ -	-	9,190.81	392,302.80	170,841.54	572,335.15
Stetings	-	-	-	345,104.11	172,628.41	517,732.52
Madaket	-	-	-	277,316.51	163,296.85	440,613.36
Andrew Jackson	-	-	-	210,952.71	175,795.81	386,748.52
City of Alma	-	-	-	160,400.55	171,569.34	331,969.89
Kyska	-	-	-	-	120,345.08	120,345.08
Maiden Creek	-	-	-	-	67,713.42	67,713.42
Fairisle	74,395.51	443,516.64	443,516.64	443,516.64	193,144.34	1,598,089.77
Fairland	36,523.81	433,671.12	433,671.12	433,671.12	188,856.78	1,526,393.95
Raphael Semmes	-	407,521.73	442,611.36	442,611.36	192,750.11	1,485,494.56
Blenville	-	150,444.39	450,000.00	450,000.00	195,967.74	1,246,412.13
Azalea City	-	110,769.49	450,000.00	450,000.00	195,967.74	1,206,737.23
Warrior	-	81,237.53	448,669.20	448,669.20	195,388.20	1,173,964.13
Jean LaFitte	-	23,895.12	421,334.28	421,334.28	183,484.28	1,050,047.96
Afoundria	-	-	389,059.82	404,718.72	176,248.46	940,027.00
Acosta	-	-	193,177.40	398,910.00	173,718.87	765,806.27
Total	<u>110,919.32</u>	<u>1,651,056.02</u>	<u>3,651,230.63</u>	<u>5,279,508.00</u>	<u>2,737,716.97</u>	<u>13,430,430.94</u>

* To March 7, 1946, at Midnight

The above calculations have been made on the basis of accrual of the expense by the Maritime Administration and do not purport to indicate the method used by Owner in recording the transactions in its books of accounts.

CERTIFICATE.

**UNITED STATES OF AMERICA
UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA**

I, WILLIAM J. O'CONNOR, Clerk of said Court, do hereby certify that the attached Exhibits S-1 and S-2 to Plaintiff's Exhibit F, consisting of Forty-One (41) Pages, numbered One (1) to Forty-One (41), both inclusive, are a true and correct photostatic copy of the originals of those Exhibits contained in the transcript of the original record and proceedings had in this court in the case of WATERMAN STEAMSHIP CORPORATION, Plaintiff, versus UNITED STATES OF AMERICA, Defendant, CIVIL ACTION FILE No. 2284, as fully as the same remain on file and of record in my office as such Clerk, and which were filed with the Clerk of the Court of Appeals for the Fifth Circuit at New Orleans, Louisiana, in accordance with the Joint Designation of the Contents of Record on Appeal filed therein.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the seal of the United States District Court for the Southern District of Alabama, at Mobile, Alabama, this the 8th day of February, 1965.

WILLIAM J. O'CONNOR, Clerk,
United States District Court
Southern District of Alabama

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APPENDIX E**Computations****I. Original Purchase Price—Method of Payment (R. 41)**

Cash	\$ 6,449,107.02
Trade-in (4 vessels)	2,609,600.00
Mortgages	40,524,060.00
Total	\$49,582,767.02

II. Original Basis, Adjusted for Vessels Traded in, as of 3/7/46 (R. 42)

Total Cash	\$16,235,446.21
Adjusted basis of 4 vessels traded in	175,876.40
Mortgage indebtedness (3/7/46)	30,737,720.81
Total	\$47,149,043.42

III. Total Credit to Petitioner Under 9(b) (1) and (4) (R. 44)

Total cash paid as down payment and in reduction of mortgage indebtedness through 3/7/46	\$16,235,446.21
Less 25% of statutory sales price	4,499,495.47
Total credit	\$11,735,950.74

IV. Mortgage Adjustment Under 9(b) (2) and (3) (R. 45)

Balance of mortgage indebtedness (as of 3/7/46)	\$30,737,720.81
Statutory Sales Price	\$17,997,981.84
Less 25% Statutory Sales Price	4,499,495.47
Less Readjusted-trade-in allowance (9(b)-(7))	312,557.44
Adjusted mortgage indebtedness (as of 3/8/46)	13,185,928.93
Reduction in mortgage indebtedness	\$17,551,791.88

V. Computation of Net Cash Credit to Petitioner Under 9(b) (8) (R. 47)**Credits in favor of Petitioner**

Cash payments in excess of 25% of statutory sales price (9(b) (1) and (4))	\$11,735,950.74	(R. 44)
Interest (9(b) (5))	2,686,262.15	(R. 45)
Charter hire (9(b) (6))	1,495,124.58	(R. 45-6)
Tax (9(b) (8))	430,205.66	(R. 45)
Total	\$16,347,543.13	

Credits in favor of Maritime

Charter hire (9(b) (6)) (R. 45)	13,430,430.94
Net cash credit to Petitioner	\$ 2,917,112.19

VI. Total mortgage adjustment (R. 48)

Balance of original mortgage indebtedness as of 3/7/46 (R. 41)	\$30,737,720.81
Reduction in mortgage indebtedness as of 3/8/46 (R. 45)	\$17,551,791.88
Net cash credit of Petitioner applied against mortgage indebtedness (R. 47)	2,917,112.19
Total amount by which mortgage indebtedness reduced under Section 9 as of 3/8/46 (R. 48)	20,468,904.07
Reduced mortgage indebtedness as of 3/8/46 (R. 48)	\$10,182,779.04

VII. Basis of 18 vessels after Section 9 Adjustment (R. 49)

Basis as of 3/7/46 (R. 41)	\$47,149,043.42
Adjustment in mortgage indebtedness as of 3/8/46 (R. 48)	20,468,904.07
Basis after Section 9 adjustment (as of 3/8/46) (R. 49)	\$26,680,139.35

VIII. Petitioner's Economic Investment in or Tax Cost of Vessels After Section 9 Adjustment (as of 3/8/46) (R. 49)

Total cash paid as down payment and in reduction of mortgage indebtedness through 3/7/46 (R. 41-2)	\$16,235,446.21
Adjusted basis of 4 vessels traded in (R. 41)	175,876.40
Remaining mortgage indebtedness after Section 9 adjustment*	10,268,836.74
Total	\$26,680,139.35

* Additional cash payment of \$86,037.70 made as of 3/8/46 was outside Section 9 adjustment and had no effect on the basis of the vessels.

IX. Adjustment in Basis Under Government Contention

Original basis, adjusted for 4 vessels traded in, as of 3/7/46	\$47,149,043.42
Cash credit to Petitioner (9(b)(1) and (4))	\$11,735,950.74
Mortgage adjustment (9(b)(2) and (3))	17,551,791.88
Reduction in original purchase price	29,287,742.62
Unadjusted basis after Section 9 adjustment (on 3/8/46)	\$17,861,300.80*

* The difference between this figure and the statutory sales price (\$17,997,981.84) is the difference between readjusted trade-in allowance on 4 vessels under 9(b)(7) (\$312,557.44) and the adjusted tax basis of those 4 vessels (\$175,876.40).

X. Petitioner's Investment in Vessels by Applying Section 9(b)
(1) through (3), as Contended by Government

Total Cash paid as down payment and in reduction of mortgage indebtedness through 3/7/46	\$16,235,446.21	
Credit to Petitioner under Section 9(b) (1)	<u>11,735,950.74</u>	
Remaining cash investment		\$ 4,499,495.47
Adjusted mortgage indebtedness under Section 9(b) (2) and (3)		13,185,928.93
Readjusted trade-in allowance on 4 vessels		<u>312,557.44</u>
Total investment		\$17,997,981.84

XI. Petitioner's Investment After Return to It of "Net Cash Credit"

Total cash paid as down payment and in reduction of mortgage indebtedness through 3/7/46	\$16,235,446.21	
Net cash credit to Petitioner under 9(b) (8)	<u>2,917,112.19</u>	
Petitioner's cash investment		\$13,318,334.02
Adjusted mortgage indebtedness under 9(b) (3)		13,185,928.93
Adjusted basis of 4 vessels traded in		<u>175,876.40</u>
Petitioner's total investment		\$26,680,139.35

XII. Computations under H.R. 4486, H.R. 5213, H.R. 1425
and S. 292

1. Statutory Sales Price	\$17,997,981.84
2. 25% payable in cash	4,499,495.47
3. 75% secured by mortgage	13,498,486.37
4. Total cash paid as down payment and in reduction of mortgage indebtedness through 3/7/46 (R. 41-42)	16,235,446.21
5. 25% cash payment required	<u>4,499,495.47</u>
6. Cash refund	\$11,735,950.74*
7. Mortgage indebtedness (75%)	13,498,486.37
8. Cash refund applied on mortgage	<u>11,735,950.74</u>
9. Remaining mortgage indebtedness	\$ 1,762,535.63*

* Both before adjustment for adjusted value of
4 vessels traded in.

Results — either lines 2, 3 and 6
or lines 4 and 9.

XIII. Computation of Charter Hire Refund to Government Under Senate Amendment of H.R. 3603 (assuming the charter hire rate to be 15% of the original purchase price—See Option I, Clause B (Hire), Part I, Contract No. WSA-8884 (War Shipping Administration—Requisition Bareboat Charter for Dry Cargo and Tank Vessels), Exhibit 59 to Plaintiff's Exhibit G (R. 76, 152 and 153-4) and Exhibit 30 to Plaintiff's Exhibit G (R. 76 and 150)—Petitioner collected 27.1% of the original purchase price in charter hire of the vessels. See line No. 1 and line No. 7 under the column "Total All Vessels," on Sheet 5 of Exhibit B to Addendum No. 1 to Contract No. MCC-42281, Exhibit S-3 to Petitioner's Exhibit F (R. 67).

\$13,430,430.94 (charter hire paid by Government) divided by \$49,582,767.02 (original purchase price) equals 27.1%.

This percentage (27.1%) applied to adjusted purchase price (\$17,997,981.84) will give \$4,875,453.08 as charter allowed under Senate amendment.

Charter hire collected by Petitioner	\$13,430,430.94
Charter allowed by Senate amendment	<u>4,875,453.08</u>
Charter hire to be refunded to Government	\$ 8,554,977.86
Charter hire credited to Government under 9(b) (6) of House bill	13,430,430.74
Charter hire credited to Petitioner under 9(b) (6) of House bill	<u>1,495,124.58</u>
Net charter hire credit to Government under 9(b) (6) of House bill	\$11,935,306.16
Difference between refund to Government under Senate amendment and credit to Government under House bill	\$ 3,380,328.30

XIV. Computations for National Bulk Carriers (214 F. Supp. 585)

1. Statutory sales price (p. 586)	\$5,153,899.31
2. 25% of statutory sales price	1,288,474.83
3. Adjusted trade-in allowance	445,494.34
4. Adjusted mortgage indebtedness	3,419,930.14
5. Actual cash payments through 3/7/46	\$ 896,425.01

Computation of credits to Maritime and National Bulk to
Maritime

6. 9(b) (1) (deficiency in cash payment)	\$ 392,049.82	
7. 9(b) (6) (charter hire paid by Gov't)	1,385,985.30	
8. 9(b) (8) (tax deficiencies under 9(c) (1))	260,510.04	
9. Total		\$2,038,545.16

To National Bulk

10. 9(b) (5) (interest)	\$ 234,821.77	
11. 9(b) (6) (charter on trade-ins)	406,440.31	
12. Total		\$ 641,262.08
13. Net credit to Maritime		1,397,283.08
14. Adjusted mortgage indebtedness (9(b) (3))		3,419,930.14
15. Mortgage indebtedness after all adjustments on 3/8/46		\$4,817,213.22
16. Adjusted trade-in allowance		445,494.34
17. Mortgage indebtedness plus trade-in		\$5,262,707.56
18. Statutory sales price		5,153,899.31
19. Excess of mortgage indebtedness plus trade-in over statutory sales price (without regard to cash pay- ments)		\$ 108,808.25

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964.

No. 245

WATERMAN STEAMSHIP CORPORATION,

Petitioner,

vs.

UNITED STATES OF AMERICA.

**ON WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE
FIFTH CIRCUIT.**

BRIEF FOR PETITIONER.

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IN THE
Supreme Court of the United States
OCTOBER TERM, 1964.

No. 245

WATERMAN STEAMSHIP CORPORATION,
Petitioner,
vs.

UNITED STATES OF AMERICA.

**ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FIFTH CIRCUIT.**

BRIEF FOR THE PETITIONER.

Opinions Below.

The opinion of the Court of Appeals (R. 183) is reported at 330 F. 2d 128. The dissenting opinion of Circuit Judge Cameron (R. 187) begins at 330 F. 2d 133. The opinion of the United States District Court for the Southern District of Alabama (R. 170) is reported at 203 F. Supp. 915, with that portion of the Opinion which was reversed by the Court of Appeals and which concerns the issue before this Court beginning at 203 F. Supp. 928. (R. 170)

Jurisdiction.

The judgment of the Court of Appeals was made and entered on March 30, 1964. (R. 192) Petition for Rehearing

was filed on April 20, 1964 (R. 193) but was denied by that Court on May 4, 1964. (R. 199) The Petition for a writ of Certiorari was filed with this Court on July 2, 1964, and was granted on December 7, 1964. (R. 200) The jurisdiction of this Court rests on 28 U. S. C. 1254(1).

Question Presented.

Whether the tax cost basis of vessels purchased by Petitioner prior to the enactment of the Merchant Ship Sales Act of 1946 and whose original purchase price to Petitioner was "adjusted" downward pursuant to Section 9 of that Act, is the economic investment of Petitioner in the vessels, represented by their original purchase price to Petitioner, less the amount of that price adjustment, as determined under the provisions of Section 113(a) of the Internal Revenue Code of 1939.

Statutes Involved.

The statutory provisions involved are Sections 23(1) and (n), 113(a) and (b) and 114(a) of the Internal Revenue Code of 1939, 26 U. S. C. (herein referred to as the "Code") and Sections 3 and 9 of the Merchant Ship Sales Act of 1946, c. 82, 60 Stat. 41 (herein referred to as the "Act"), 50 U. S. C., Appendix, Section 1735 *et seq.*, which statutory provisions are printed in Appendix A, *infra*. The pertinent sections of the Regulations issued by the United States Maritime Commission (now Federal Maritime Board but herein referred to as "Maritime"), pursuant to Section 9 of the Act, are Sections 299.66 and 299.133,¹ which are printed in Appendix A, *infra*, A-11.

¹ 46 C. F. R., Part 299, Subpart E and Subpart G as published in General Order 60, Revised, 22 F. R. 11103, December 31, 1957; originally published in 11 F. R. 4459, April 23, 1946 as Sections 299.51 and 299.87.

Statement.

Petitioner is a common carrier for hire by water engaged in foreign commerce and has been so engaged since its incorporation in 1919. During the period January 1, 1941 through March 7, 1946, Petitioner purchased from Maritime 18 vessels. (R. 41; R. 163)²

Each of these vessels was purchased by Petitioner from Maritime under a Contract. (R. 52) Contract No. MCc-40639 between Maritime and Petitioner for the purchase of the vessel *Fairport* (Exhibit 24 to Petitioner's Exhibit G; R. 76, 78) is one such Contract and is fairly representative of the Contracts by and between Petitioner and Maritime for the purchase of the other 17 vessels (see Contract for HASTINGS, Exhibit 28 to Petitioner's Exhibit G; R. 76, 117). ARTICLE 3 of such Contract sets out the purchase price of the particular vessel. (R. 80) and ARTICLE 4 provided for the time and method of payment of the purchase price for such vessel. (R. 80-82) ARTICLE 12 of such Contract was entitled "Future Legislation" and provided as follows (R. 86):

"ARTICLE 12. Future Legislation. The Commission agrees that in the event of the enactment of legislation authorizing the sale by the United States of vessels, constructed or sold under conditions

² Actually, on March 7, 1946 Petitioner was a party to a contract with Maritime to purchase a vessel—the *John B. Waterman*—which was then under construction but which was not delivered until March 11, 1946. R. 163. Although the *John B. Waterman* was not delivered to Petitioner until March 11, 1946, it will be treated hereunder as if all actions on that date had occurred on March 7, 1946.

similar to the construction and sale of the Vessel herein agreed to be sold, at a price less than the actual construction cost thereof, exclusive of the cost of national defense features installed in any such vessel, the Buyer shall be granted the benefit of such legislation with respect to the sales price of the Vessel, in which event the Commission shall make an appropriate *adjustment* with the Buyer on the *purchase price of the Vessel*'' (Emphasis added).

The same or similar provisions were contained in the other such Contracts. (R. 118, 124 and 169)

For all eighteen vessels so purchased by Petitioner from Maritime, Petitioner agreed to pay as the aggregate purchase price the sum of \$49,582,767.02. (R. 41)³

At the times of the original purchases of the eighteen vessels, Petitioner paid \$6,449,107.02 in cash and was allowed a credit of \$2,609,600 for four vessels traded in and delivered to Maritime on the original purchase price. Petitioner gave a mortgage to the United States of America as security for the balance due on the purchase price of each vessel, which mortgages aggregated, for the eighteen vessels, \$40,524,060.00. (R. 41)⁴ The mortgages given by the Petitioner to the United States on the *Fairport* (Exhibit 25 to Petitioner's Exhibit G; R. 76, 87) and on the *Hastings* (Exhibit 29 to Petitioner's Exhibit G; R. 76, 125) are representative of the mortgages given by Petitioner to the Government on each of the eighteen vessels purchased during this period.

³ The purchase price of each of the eighteen vessels is indicated on line No. 1 of Exhibit B to Exhibit S-3 of Petitioner's Exhibit F (R. 51, 63, 65 and 67) and Defendant's Exhibit 1. (R. 161-3) See computation I, Appendix E. *infra*, E-1.

⁴ The cash payment on each of the eighteen vessels, the trade-in allowance allowed on four of the vessels, and the amount of the original mortgage indebtedness on each vessel is set out in Defendant's Exhibit 1. (R. 161-163)

Upon delivery of sixteen of the eighteen vessels so purchased by Petitioner, the latter immediately chartered each of the vessels to the Government. (R. 41) The Bareboat Charter of the *Hastings* between Petitioner and the War Shipping Administration, Contract No. WSA-8884 (Exhibit 59 to Petitioner's Exhibit G; R. 76, 152), is fairly representative of the charters under which the other 15 vessels were chartered by Petitioner to the War Shipping Administration.

From the date of purchase of each of the eighteen vessels through March 7, 1946, Petitioner made additional cash payments to the Government in reduction of the mortgage indebtedness on the said vessels, in the aggregate amount of \$9,786,339.19, leaving a balance due on the mortgage indebtedness as of that date, of \$30,737,720.81. (R. 41) As of March 7, 1946, the adjusted basis of the eighteen vessels claimed by Petitioner, approved by the Internal Revenue Service and stipulated herein was \$47,149,043.42 (after adjustment of unrecognized gain on the four vessels traded in and prior to certain other adjustments not in controversy in this matter). (R. 41)⁵

On March 8, 1946, Congress enacted the Act. Section 9 of the Act (Section 1742, Tit. 50, App., 1952 ed.) provides in general that a citizen of the United States, such as Petitioner, who owns a vessel, such as the eighteen then owned by Petitioner, shall "be entitled to an adjustment in the price of such vessel under this section" if he makes application within such time and in such form and manner as

⁵ No gain was recognized for tax purposes on the trade-in of the 4 vessels by reason of Section 510(e) of the Merchant Marine Act, 1936, 46 U. S. C. Section 1060(e) (1952 ed.). The total adjusted basis of the 4 vessels traded in was \$175,876.40 at the time they were traded in, which became a part of the adjusted basis of the vessels for which traded (Petitioner's Exhibit F. Par. 1, R. 40, 41). See computation II in Appendix E, *infra*, E-1.

prescribed by Maritime. Petitioner made such application on May 31, 1946 for adjustment in price of the eighteen vessels in question. Pursuant to that Application and the Regulations of Maritime, Petitioner and Maritime entered into an "Interim Agreement" on December 30, 1946 for an interim adjustment in the purchase price of the eighteen vessels, Contract No. MCc-42281 (Exhibit S-1 to Petitioner's Exhibit F; R. 40 and 42).⁶ This Agreement found that "The Applicant is lawfully entitled to an adjustment in the price of the vessels, pursuant to the provisions of Section 9 of the Act".⁷

By letter of January 3, 1951, Maritime forwarded certain schedules to Petitioner for its review and concurrence.⁸ On June 11, 1951, Petitioner and Maritime entered into a "Final Agreement," in the form of Addendum No. 1 to Contract No. MCc-42281, entitled "Final Agreement for Adjustment for Prior Sales Pursuant to Section 9 of the Merchant Ship Sales Act of 1946." (Exhibit S-3 to Petitioner's Exhibit F; R. 40, 43 and 51-73)

Pursuant to the Act and to that Contract, the purchase price of the eighteen vessels was to be, and was, adjusted under the provisions of Section 9 of the Act, as of March 8, 1946. Pursuant to that Contract, Petitioner made a cash payment to the Respondent of \$86,037.70 (R. 57), and the aggregate mortgage indebtedness of Petitioner to Respondent on the eighteen vessels was adjusted to \$10,182,779.04.

⁶ Exhibit S-1 to Petitioner's Exhibit F, is not a part of the Record printed in this Court. However, by stipulation of the parties here, it was certified to this Court by the Clerk of the Trial Court and is printed in Appendix D, *infra*, D-1.

⁷ Appendix D, *infra*, D-1 and D-2.

⁸ Exhibit S-2 to Petitioner's Exhibit F (R. 40 and 43) is not a part of the Record printed in this Court. However, by stipulation of the parties here, it was certified to this Court by the Clerk of the Trial Court and is printed in Appendix D, *infra*, D-18.

(R. 57) Thus, as of March 8, 1946, Petitioner had paid to the Government \$16,315,483.91 in cash, had been credited on the purchase price of the vessels with \$175,876.40, as the adjusted basis of the four vessels traded in, and owed the Government in the aggregate for the mortgages on the eighteen vessels, \$10,182,779.04. (R. 49) The aggregate of these cash payments, trade-in allowances and mortgage indebtedness, as of March 8, 1946, was stipulated to be \$26,680,139.35. (R. 49) It is this amount which Petitioner contends becomes the adjusted basis of the eighteen vessels for tax purposes under Section 113(a) of the Code, reflecting the transaction under which Petitioner's purchase price was adjusted as of March 8, 1946.

The aggregate "statutory sales price" of the eighteen vessels established by Maritime under the provisions of Section 9 of the Act, as defined in Section 3(d) of the Act (Section 1736, Tit. 50 U. S. C., App., 1952 ed.) was

⁹ The term will be often referred to and can be confusing if its meaning and usage be not initially understood. The term is defined in Section 3(d) of the Act, when applied to a dry cargo vessel, as "an amount equal to 50 per centum of the postwar domestic cost of that type vessel." However, this is subject to certain adjustments but in no case will such adjustment result in a statutory sales price "less than 35 per centum of the domestic war cost of vessels of the same type." Thus the term is used to mean an amount both before and after certain adjustments.

The definition is also used as a legislative drafting technique for two different usages. First, and most important from the principal purpose of the Act, Section 4(a) authorizes any citizen to apply to purchase a vessel at the statutory sales price. In this context, the "statutory sales price" is the price at which a vessel would be *actually sold subsequent* to the enactment of the Act.

The second usage, and the one applicable in a situation such as Petitioner's, in which an adjustment in original purchase price was to be made on a vessel *actually purchased prior* to the enactment of the Act, is quite different. In this latter context, the "statutory sales price" is employed as a convenient method of stating an amount to be utilized for measuring and determining various items in the complicated adjustment formula set out in Section 9. Most importantly, *no sale is actually made* under the Act under this circumstance.

\$17,997,981.84. (Par. 8(a), Petitioner's Exhibit F, R. 40, 44)¹⁰ The Government contends that this statutory sales price (regardless (1) of the actual amount of the payments made by Petitioner to Respondent under the original Contracts for the purchase of the eighteen vessels as amended by the Final Agreement by which the adjustment in price on the eighteen vessels was mutually agreed upon pursuant to Section 9 of the Act and (2) of the obligations of Petitioner to make subsequent payments on the adjusted mortgage indebtedness on all eighteen vessels under the Final Agreement) was the "cost" of these vessels to Petitioner and, therefore, the basis of these vessels for tax purposes to Petitioner. (R. 49)

The question involves the annual amount of depreciation on the 18 vessels to which Petitioner is entitled under the Code. The tax years in question are 1947 through 1950. Petitioner paid its taxes for the years in question based on a lower depreciation resulting from the lower statutory sales price basis and sued for refunds, claiming that it was entitled to the greater depreciation based on its actual cost basis in the vessels after the adjustment in purchase price.¹¹

¹⁰ See also line 13, Exhibit B to Exhibit S-3 to Petitioner's Exhibit F. (R. 40, 64, 66 and 68)

¹¹ The cost basis claimed by Petitioner for four of the vessels (*Afoundria*, *Jean LaFitte*, *Wacosta* and *Warrior*) is less than the statutory sales prices, but the cost basis claimed for the remaining fourteen vessels is greater than the statutory sales prices, resulting in a claimed total cost basis of the eighteen vessels of \$26,680,139.35, which is greater than the total statutory sales prices. The District Court held that Petitioner was entitled to a refund of Federal income taxes for the years in question by reason of a recomputation of the depreciation deductions allowable with respect to the vessels based on the higher sum as their cost basis for tax purposes. Petitioner sold one of the vessels (*Warrior*) on September 28, 1948; therefore, increased depreciation deductions are sought for all eighteen of the vessels from January 1, 1947 through September 28, 1948, and for the remaining seventeen vessels from September 29, 1948, through December 31, 1950. (Par. 13, Petitioner's Exhibit F, R. 40 and 49-50)

Summary of Argument.

The Court of Appeals erred in determining that the tax basis of the 18 vessels owned by Petitioner, whose original purchase price was adjusted under Section 9(b) of the Act, was the arbitrarily determined and artificial statutory sales price for such vessels under the Act, rather than the actual economic cost of these vessels to Petitioner determined under the normal Code rules, i.e., the original undisputed cost of the vessels less the undisputed adjustment thereagainst under Section 9(b) of the Act.

The basis of the 18 vessels for tax purposes immediately prior to the date of enactment of the Act is not in dispute and was stipulated by the parties. Although the Government contends, in effect, that the Act is a tax statute, it does not point to any specific provision of the Act which clearly establishes the tax basis of a vessel whose original purchase price is adjusted thereunder. Petitioner claims that not only was the Act not a tax statute but, by failing to provide for the tax basis of such vessel, Congress left the determination of such basis to the rules usually followed under the Internal Revenue Code of 1939.

It is well settled that, in determining the basis of property under Section 113(a) of the Code, the actual economic cost of the property to the taxpayer (i.e., the value of the property given up by the taxpayer for the property purchased plus the amount which the taxpayer obligates himself to pay) constitutes his cost basis of the property. It is undisputed, in fact it is stipulated, as to the amount of cash payments made by the taxpayer on the purchase price of the vessels up to the date of enactment of the Act, the value of the property, adjusted for tax purposes, which the taxpayer gave up for the property

purchased, and the amount which the taxpayer was obligated to pay on the purchase price immediately prior to the enactment of the Act. It is also undisputed and stipulated as to the adjustment made on the original purchase price of the 18 vessels under Section 9(b) of the Act. The controversy arises solely from the tax effect of this adjustment. Petitioner contends that such adjustment (whether carried out as a cash payment or credit, or as an adjustment to the obligation to pay, or as a combination of the two) shall simply be subtracted from the previous payments made and from the balance remaining on the original obligations to pay (the original cost basis) to get the new economic cost of these vessels and, therefore, their new tax basis to Petitioner.

Section 9(b) in eight numbered paragraphs thereunder sets out a complete and indivisible formula for determining the adjustment in purchase price. The statute is clear that the adjustment is to be made by applying each of the eight paragraphs. There is nothing in the language, in the structure or in the legislative history of Section 9(b) that would specifically, or by inference, allow or require the adjustment under that subsection to be otherwise determined.

The lower courts who have ruled for the Government on this question¹² erroneously interpreted the clear and

¹² This same question has been before three District Courts and the Court of Claims. *Barber Oil Corporation v. Manning*, 135 F. Supp. 451 (D. N. J. 1955) (herein for convenience referred to as "*Barber Oil*"); *Socony Mobil Oil Co. v. U. S.*, consolidated with *Texaco, Inc. v. U. S.* and *Mississippi Shipping Co. v. U. S.*, 287 F. 2d 910 (Ct. Cls., 1961), rehearing denied, 289 F. 2d 326 (1961) (herein for convenience referred to as "*Socony*"); *Waterman Steamship Corporation v. U. S.*, 203 F. Supp. 915 (S. D. Ala. 1962); and *National Bulk Carriers, Inc. v. U. S.*, 214 F. Supp. 585 (D. Del., 1963) (herein for convenience referred to as "*National Bulk*"). In the *Barber Oil*, *Socony* and the instant case, judg-

unambiguous language and structure of Section 9 of the Act and by inference and implication, arrived at by reasoning back from an erroneous conclusion, made one formula and one adjustment into several formulae and adjustments with differing purposes and effects.

Since Section 9(b) of the Act is clear and unambiguous as to its application and effect, resort by the lower courts to the legislative history or environment of the Act was not only not necessary but under the circumstances, erroneous. However, if resort to such extrinsic aids was proper, it was only for the limited purpose of showing conclusively that the clear wording and structure of the Section was *not* as it appeared. If this legislative history confirmed, or merely raised doubts as to, the meaning and effect of the Section drawn from a literal reading thereof, then the conclusion drawn from such literal interpretation of the Section itself would stand.

If reference to legislative history was proper, Petitioner maintains that the legislative history of this particular Act,

ment in the trial court was for plaintiff taxpayer, while in the *National Bulk* case judgment was for the Government. No appeals were taken in the *Barber Oil* and *Socony* cases. The Government appealed in the instant case and the taxpayer appealed in *National Bulk* on this issue. Both Courts of Appeals ruled in favor of the Government on these appeals. *U. S. v. Waterman Steamship Corporation*, 330 F. 2d 128 (5th Cir., 1964), reversing with one judge dissenting; *National Bulk Carriers Inc. v. U. S.*, 331 F. 2d 407 (3rd Cir., 1964), affirming. Herein for convenience the Delaware District Court (Judge Wright) will be referred to as the "Delaware Court" and the Alabama District Court (Judge Thomas), as the "Alabama Court." Petitions for Writs of Certiorari were applied for in the instant case and in *National Bulk*. Petition was granted in this case and is pending in *National Bulk* (No. 246). As pointed out in Petitioner's Petition for Writ of Certiorari filed in this Court (at p. 9), four other known cases are pending with the identical issue, two in the Court of Claims and two in the Tax Court of the United States, and a substantial number of other taxpayers are faced with this same question but have not yet instituted litigation.

including prior and similar bills considered, the Committee reports thereon, and the changes in and amendments to the various bills considered and culminating in the Act, clearly supports Petitioner's position as to the application and effect of Section 9(b) of the Act. Congress considered and rejected other bills which, if adopted, would have had the effect which the Government seeks for this Act, including one that contained a specific provision that would have established the basis of a vessel, whose original purchase price was adjusted under the Act, at the statutory sales price, the result sought by the Government under the Act but without such a provision. Under these circumstances, the Delaware Court and the Courts of Appeals were in error in finding a specific Congressional intent that the statutory sales price would be the tax cost or basis for such vessels.

The Fifth Circuit erred in basing its opinion on, and choosing to follow, the reasoning of the Delaware Court, rather than the carefully reasoned analysis of the Act and of its legislative history as contained in the opinions of the Alabama Court that initially determined this case and the issue in this case in favor of Petitioner and of the Court of Claims in the *Socony* consolidated cases. The lower courts (1) misconstrued completely the effect of the amendment proposed on the floor of the House of Representatives to Section 9(b) and the explanation thereof on the floor of the House in the debates thereon, which amendment was in the main embodied in the Act as enacted; (2) relied on committee reports that concerned a Section 9(b) that was materially different from that contained in the Act as enacted; and (3) ignored the fact and the effect, of the rejection or omission of provisions in bills considered by Congress which would have specifically provided for the tax effect found by the lower courts, and contended for by the Govern-

ment, thereby erroneously making Section 9 of the Act into a law which had been considered but rejected by Congress.

Further, as a result of their studies of the legislative history of the Act, these lower courts chose to ignore entirely the unity of the formula provided in Section 9(b) and instead treated the paragraphs under that subsection as requiring two separate computations, and, therefore, a radically different tax effect, instead of the one computation clearly contemplated and provided. This error undoubtedly stemmed from a basic misunderstanding of the intent and, therefore, of the effect, of the Act as to pre-Act and postwar purchasers of vessels under the Act. Not only did the Act not equalize such purchasers in every respect, which was impossible of attainment, but there is nothing to indicate that, so far as the tax basis of vessels purchased by the two different classes of purchasers was concerned, there was an intent that the tax basis be the same or that such basis be determined other than under the normal rules applied in the same manner to both classes of purchasers.

If, however, despite the clear wording of the statute and the prior or contemporaneous legislative history, there still remains any doubt as to the application and effect of, and Congressional intent with regard to, Section 9(b), then the subsequent legislative history of Section 9(b) of the Act decisively supports Petitioner's position. As soon as the Internal Revenue Bureau took the position, which the Government argues here, that the tax basis of a vessel, whose original purchase price was adjusted under the Act, was the statutory sales price, legislation was introduced in the Congress to make clear that the adjusted purchase price, and not the statutory sales price, was the proper cost basis of such vessel. The Committee reports in support of this legislation clearly indicated that it was not the *original* intent of the Congress that the statutory sales price be such

cost basis. These reports were made by the Committees of both Houses which had similar jurisdiction to those which had previously considered, over a long period, the legislation which culminated in the Act. The fact that this legislation, when adopted, was vetoed by the President does not impair or make irrelevant such legislation and such legislative history as evidence of the intent of Congress on the issue at hand.

Argument.

1. Internal Revenue Code principles require tax cost basis to reflect true economic cost of property to taxpayer as its basis for computation of allowable depreciation.

(a) Tax cost basis of vessels to Petitioner prior to enactment of Act is not in dispute and was stipulated.

On March 7, 1946, Petitioner was the owner of 17 vessels and the party to a contract with the Government to purchase an 18th vessel, each of which had been purchased from the Government by a separate contract. Each of these vessels had been paid for, partly in cash (and, as to four of the vessels, partly by a trade-in allowance) and the balance of the purchase price remaining due on each was evidenced by a series of 20 notes in equal amounts, payable in the succeeding 20 years after the date of purchase, and secured by a preferred ship mortgage. Sixteen of the eighteen vessels had been chartered to the Government upon purchase. Through March 7, 1946, Petitioner had been paid charter hire by the Government on the 16 vessels chartered to it in the aggregate amount of \$13,430,430.94.¹³

¹³ Line 7, Sheet 5, Exhibit B to Exhibit S-3 to Petitioner's Exhibit F (R. 40, 63 and 67)

The 18 vessels in question undoubtedly belonged to Petitioner, subject only to Petitioner's paying the notes when due and fulfilling its other obligations required and secured by the mortgages on each of the vessels. The original contract of purchase on each vessel provided that, in the event of enactment of legislation authorizing the sale by the Government of vessels constructed or sold under conditions similar to the construction and sale of the vessels purchased by Petitioner from the Government at a price less than the actual construction cost of such vessel, Petitioner would be granted the benefit of such legislation with respect to the sales price of the vessels to it, and, in that event, the Government "shall make an *appropriate adjustment* with the Buyer on the purchase price of the Vessel". (R. 86 and 124) Also, the charter hire paid by the Government and received by the Petitioner on the 16 vessels had been paid and received in accordance with the charters then in effect and were held as a matter of right by Petitioner and such charter payments had been commingled with, and become a part of, the capital assets of Petitioner.

The parties hereto stipulated and the Alabama Court found as a matter of fact, which finding was recognized by the Fifth Circuit, that the tax basis of the 18 vessels to Petitioner on March 7, 1946, was \$47,149,043.42. (Par. 3, Petitioner's Exhibit F, R. 40 and 41) This basis was the actual economic cost to Petitioner of these vessels, represented by their original aggregate purchase price of \$49,582,767.02 (adjusted downward by \$2,433,723.60 to account for unrecognized gain on four vessels traded in at the time of original purchase), and had been approved by the Internal Revenue Service. Of the original purchase price, \$6,449,107.02 was paid in cash; \$2,609,600.00 was paid through a trade-in allowance on four vessels; and the

remaining sum of \$40,524,060.00 was evidenced by a series of notes secured by 18 preferred ship mortgages, one per vessel. From the various dates of purchase of the vessels through March 7, 1946, Petitioner made cash payments in the aggregate of \$9,786,339.19 in reduction of the mortgage indebtedness, leaving an aggregate mortgage indebtedness, as of March 8, 1946, of \$30,737,720.81, for which Petitioner was obligated to pay.

As of March 8 1946, an adjustment in the purchase price of the vessels, by means of an adjustment in the remaining mortgage indebtedness pursuant to Section 9 of the Act, was made. The net economic effect on Petitioner of such adjustment in purchase price was simply and solely a reduction of \$20,468,904.07 in the then remaining mortgage indebtedness¹⁴ and in the amount that Petitioner had previously obligated itself to pay for the vessels. Petitioner's economic investment in, and consequently its cost basis of, the vessels was therefore reduced as of March 8, 1946, from \$47,149,043.42 to \$26,680,139.35.¹⁵

(b) Positions and contentions of the parties.

Petitioner contends that the Act, although having certain specific but limited provisions with regard to taxes, is not a tax statute; that the Act itself nowhere specifically fixes, nor can it be construed by a normal and reasonable

¹⁴ Par. 9, Petitioner's Exhibit F, R. 40 and 47-48; line 20, Sheet 6, Exhibit B to Exhibit S-3 to Petitioner's Exhibit F, R. 68. As of that date and pursuant to the provisions of the Final Agreement between Petitioner and Government, Petitioner made an additional cash payment to the Government of \$86,037.70. This simply increased the amount of cash payments which Petitioner had made and reduced its mortgage indebtedness by an equivalent amount but had no effect on the economic investment of Petitioner in, and its tax cost of, the vessels. Par. 9, Petitioner's Exhibit F (R. 40 and 48)

¹⁵ See computation VIII, Appendix E, *infra*, E-2.

construction of its provisions to fix, the tax cost basis of a vessel whose original purchase price is adjusted pursuant to Section 9 of the Act; and that, therefore, the tax cost basis of such a vessel is fixed and determined by the usual provisions and rules of the Internal Revenue Code.

Petitioner further contends that the usual provisions and rules of the Code require that the tax cost basis of property is its owner's economic cost of, or investment in, that property; and that, when the purchase price of property is later adjusted (either by a cash refund, a reduction in indebtedness for a portion of the purchase price, or a combination of the two), the owner's economic investment in that property is its original cost to him less the amount of the adjustment.

Therefore, Petitioner respectfully contends that under the normal applicable Code provisions its economic investment in the 18 vessels, and therefore its tax cost basis, is the original tax cost (\$47,149,043.42) less the adjustment in its mortgage indebtedness (\$20,468,904.07), or \$26,680,139.35.¹⁶

The Government contends that the Act is a tax statute and by its very provisions, construed in the light of its legislative history, establishes the tax cost basis of a vessel whose original purchase price is adjusted pursuant to the Act and that the normal and usual Code provisions do not apply. According to the Government, Section 9 of the Act requires that the tax cost basis of such a vessel be its "statutory sales price" as defined and used in the Act, which is \$17,997,981.84 for the 18 vessels owned by Petitioner.¹⁷ This tax cost basis is \$8,682,157.51 less than Petitioner's actual economic investment in these 18 vessels.

¹⁶ See computations IV, VI and VII, Appendix E, *infra*, E-1 and E-2.

¹⁷ See computation IX, Appendix E, *infra*, E-2.

- (c) The controlling Code sections and principles support Petitioner's contention that its true economic cost of the 18 vessels is their tax cost basis.

This issue arose by reason of the deduction which Petitioner claims it is entitled to take under the Code for depreciation on the 18 vessels purchased by it from the Government and whose purchase price was adjusted under Section 9 of the Act. Section 23 of the Code enumerates the deductions allowed from gross income to compute net income, and subsection (l) of that section provides for a reasonable allowance for the exhaustion, wear and tear (including a reasonable allowance for obsolescence) of property used in the trade or business. Subsection (n) of the same section provides that "The basis upon which depletion, exhaustion, wear and tear, and obsolescence are to be allowed in respect of any property shall be as provided in section 114." The latter section in turn provides in subsection (a) that "The basis upon which exhaustion, wear and tear, and obsolescence are to be allowed in respect of any property shall be the adjusted basis provided in section 113(b) for the purpose of determining the gain upon the sale or other disposition of such property . . ." Section 113 of the Code provides in part as follows:

"SECTION 113. Adjusted basis for determining gain or loss.

"(a) Basis (unadjusted) of property.—The basis of property shall be the cost of such property; except that—

"(b) Adjusted basis.—The adjusted basis for determining the gain or loss from the sale or other disposition of property, whenever acquired, shall be the basis determined under subsection (a), adjusted as hereinafter provided."

Thus in general, for purposes of calculating depreciation, the basis of the property to be depreciated is the cost to its owner.¹⁸ Cost is not defined in the statute nor in the regulations. However, the courts have held that the outlay of the owner for, or the latter's net investment in, the property is its cost basis to the owner. *Detroit Edison Co. v. Commissioner*, 319 U. S. 98, 63 Sup. Ct. 902, 87 L. Ed. 1286 (1943). This will be determined by the cash paid or the value of property given by the taxpayer plus the amount which the taxpayer obligates himself to pay for the property. *Crane v. Commissioner*, 331 U. S. 1, 67 Sup. Ct. 1047, 91 L. Ed. 1301 (1947). This conforms to the usual understanding and meaning of cost. As stated by Circuit Judge Cameron, dissenting in the Fifth Circuit (at p. 135), Webster's definition of cost is "The amount in value paid, charged or engaged to be paid for anything bought or taken in barter." In determining the cost basis of the property under this Section of the Code, subtleties should be ignored and actual economic cost of the property to the taxpayer should be determined by looking to the substance of the transaction, *Abraham I. Effron v. Commissioner*, 25 B. T. A. 853 (1932), and fictitious or artificially created costs, either by the taxpayer to avoid taxes or by the Government to increase taxes, are not controlling.¹⁹

Under subsection (a) of Section 113, there are 23 paragraphs enumerating exceptions to the basic rule. However, none of these exceptions remotely touches upon the problem at hand. Unless the transaction clearly falls within one of the specific exemptions requiring or permitting a basis other than original cost, the latter is to be the basis. Although

¹⁸ Treasury Reg. 111, Section 29.113(a)-2. Mertens, Law of Federal Income Taxation, Vol. 3A, Section 21.02, p. 13.

¹⁹ 3A Mertens, *op. cit. supra*, note 18, at 15.

there are these numerous exceptions, they are not to be extended by implication.²⁰

There is no dispute as to the applicable Code sections. Also, it is not disputed that Petitioner's basis for the 18 vessels prior to the adjustment in price was \$47,149,043.42 and that Petitioner's mortgage indebtedness was reduced pursuant to Section 9 of the Act by \$20,468,904.07. Under the recognized tax principles the subtraction of this reduction in mortgage indebtedness from the original basis will give Petitioner's net investment in or outlay for the property, and its new tax basis. As Judge Madden cogently and succinctly stated in *Socony* (at pp. 912-3):

"It would seem that if one has bought property and paid \$10,000 for it, and the seller later offers to readjust the price, according to a complicated formula, and when the computation is completed, the seller gives back to the buyer \$3,117.24, the property has cost the buyer \$6,882.76. That being, in fact, his cost, it would seem to be his basis for computing depreciation, if the property is depreciable for tax purposes."

Against this the Government attempts arbitrarily to fix the unadjusted tax basis of the 18 vessels at the "statutory sales price" of \$17,997,981.84. This would result in a tax basis slightly in excess of the actual cash paid on the purchase price of the vessels as of March 8, 1946 (in the amount of \$16,235,446.21), and would almost completely ignore the additional \$10,182,779.04 which Petitioner was still obligated to pay. As the Court of Claims stated in *Socony* (at p. 913); "The Government does not deny that the plaintiff's depreciation should be based upon its cost. But it says that the plaintiff's 'cost' for this tax purpose

²⁰ 330 F. 2d 128, 134 (1964); 3A Mertens, *op. cit. supra*, note 18, at 13 and Section 27.10; p. 27.

is not the difference between what it originally paid and what it got back in the section 9 readjustment. That means that the Government's asserted 'cost' is not the economic, dollars-and-cents cost, but an artificial figure, legally deemed, for this tax purpose, to be the cost though it is not in fact the cost."

If the Government is to prevail, there must be some clear and compelling reason for arbitrarily fixing Petitioner's cost basis of the vessels at an amount less than its economic investment in the vessels. In the absence of such a reason, and it is respectfully submitted that no such reason exists, the normal Code provisions and tax principles will be followed, giving the tax basis contended by Petitioner:

2. Section 9 of the Act sets forth a complete and indivisible formula which must be applied in its entirety in determining the amount of adjustment to be made in the purchase price and, therefore, in the tax cost basis, of vessels purchased from Maritime prior to the effective date of the Act.

Sections 3 and 9 of the Act are the only ones that pertain to Petitioner and this issue. Section 3 contains, in the main, definitions that apply to Section 9. The provisions of Section 9 of the Act, entitled "Adjustment for Prior Sales to Citizens," are clear and unambiguous and relate solely to price adjustment on prior sales. Subsection (a) provides that a citizen who owns a vessel which he purchased from the Commission between certain dates, or is a party to a contract with the Commission to purchase a vessel which has not been delivered to him, "shall . . . be entitled to an *adjustment in the price of such vessel under this section* if he makes application therefor, . . ." (Emphasis added).

Section 9(b) provides that "such adjustment shall be made as hereinafter provided, ..." The term "such adjustment" has meaning only in reference to the "adjustment in the price of such vessel," as set out in the preceding subsection (a). Subsection (b) further provides that "the amount of such adjustment shall be determined as follows." Again, the term "such adjustment" can only mean the "adjustment in the price of such vessel." Thereafter, in subsection (b), follow eight numbered subparagraphs, all of which, according to the plain wording of the Act, are to be applied in determining the amount of such adjustment.²¹

Paragraphs (1) through (8) of Section 9(b) are part of a complicated formula, which consists of a number of adjustments and credits to the applicant and to Maritime, the net result of which, however, is the adjustment in original purchase price. In connection with Section 9 of the Act, it must be recalled that its sole purpose and function was to serve only in the case of a vessel sold prior to the enactment of the Act. The entire section is based on a fiction, that of "treating the vessel as if it were being sold to the applicant on the date of the enactment of this Act, and not before that time." (Section 9(b)). This recognizes that no actual sale took place at that time, but only that the adjustment provided by that section would be made under such fiction and as of that date.

Paragraph (1) is a credit to applicant for the excess of all cash payments made upon the original purchase price over 25% of the statutory sales price.²² Paragraph (2)

²¹ See Appendix A, *infra*, A-6.

²² Although the Act provides that if such payments are less than such 25%, "the Applicant will pay the difference to the Commission", Maritime has, in such cases, treated it as a credit to Commission. This was the situation in *National Bulk*; see 214 F. Supp. 585, 587. See computations III and XIV, Appendix E, *infra*, E-1 and E-5.

provides for an adjustment in Applicant's mortgage, the amount and manner of which is set out in Paragraph (3).²³ Paragraph (4) is a credit to Applicant of the excess of cash payments plus re-adjusted trade-in allowance (determined under Paragraph (7)) over statutory sales price, to the extent not allowed under Paragraph (1). Paragraph (5) credits applicant with interest at $3\frac{1}{2}\%$ per annum from date of original delivery of vessel to Applicant on excess of original purchase price over any trade-in allowance, less a counter-adjustment. Paragraph (6) credits Commission with charter hire paid applicant for bareboat use of the vessel up to date of the Act and credits Applicant for charter hire that would have been paid for bareboat use of vessel exchanged on original purchase (from date of exchange to date of Act). Paragraph (7) limits the allowance for a vessel exchanged on original purchase to the amount provided in Section 8 of the Act. Paragraph (8) provides that there shall be subtracted from the sum of the credits in the favor of the Commission and Applicant, respectively, the overpayment of or deficiencies in Federal taxes resulting from the computations required under Section 9(c)(1). Then Paragraph (8) further provides that the resulting sums of credits of Commission and Applicant shall be netted for disposition.²⁴

It can thus be seen that Paragraphs (1), (4), (5), (6) and (8) grant certain credits, and that Paragraphs (2), (3) and (7) make certain adjustments. The credits are required by Paragraph (8) to be netted together, the net result of which is commonly referred to as the "net cash credit" or "cash adjustment." (Par. 8(g), Petitioner's Exhibit F,

²³ See computation IV, Appendix E, *infra*, E-1.

²⁴ See computation V, Appendix E, *infra*, E-1.

R. 40 and 46-7) All agree that the credit against the mortgage indebtedness pursuant to Section 9(b)(3) constitutes part of the total amount of the adjustment in purchase price provided for in that Section. The controversy arises solely with respect to the effect to be given to those credits provided for in Section 9(b), which were netted together pursuant to Section 9(b)(8) in order to arrive at the "net cash credit." Petitioner contends that the "net cash credit" or "cash adjustment" determined pursuant to Section 9(b)(8) constitutes an integral part of the adjustment in purchase price computed by means of applying that part of the formula in Section 9(b) relating to credits measured by cash transactions and that the total amount of the adjustment in purchase price under Section 9 is determined by adding the amount of the reduction in mortgage indebtedness, under Section 9(b)(3), and the "net cash credit", under Section 9(b)(8).

However, the Government contends that the "net cash credit", as such, does not constitute a part of the adjustment in purchase under Section 9. To support this theory it divides Section 9(b) into two computations with differing purposes. Paragraphs (1) through (4) constitute one computation for the purpose of determining the adjustment in purchase price with the result that the adjusted purchase price, and therefore, the cost basis, is the statutory sales price. Paragraphs (5) through (8) constitute the second computation whose purpose is to "unwind" certain transactions between Applicant and Government occurring between the dates of original purchase and of the Act, the amounts of which are netted together pursuant to Paragraph (8) solely for convenience in determining and making payments.

There is nothing in the language nor in the structure of Section 9(b) to support such a theory.²⁵ In fact both language and structure absolutely refute such an interpretation. As previously indicated, Section 9(b) provides that "the amount of such adjustment shall be determined as follows", followed by the eight numbered paragraphs without more or without a break after Paragraph (4). Also Paragraph (8) in netting the credits provides that "there shall be subtracted from the sum of the credits in favor of the applicant *under the foregoing provisions of this subsection . . .*", meaning Paragraphs (1) through (8) (not just (5) through (8)) and including specifically the credits in Paragraphs (1) and (4).

The position which the Government now takes was not the position of Maritime, the agency charged with the responsibility for implementing the Act. On April 23, 1946, Maritime issued regulations pursuant to the Act.²⁶ Section 299.51²⁷ of these Regulations was entitled "Adjustment for Prior Sales to Citizens." The Regulations, in so far as Section 9 is concerned, in general, follow closely the form and wording of the statute itself. Subsection (d) of Section 299.51, entitled "Amount of Adjustment", recognized the fiction under which the adjustment under Section 9(b) would be made, and the purpose being served by the computations required by that fiction and made in the numbered

²⁵ A fact which was recognized by the Delaware Court (at p. 590): "... While the legislature has not interlined any distinguishing language between those sections that bring the contract price down to the statutory sales price and the other sections, a close reading suggests that the legislature *may* have had *some* distinction in mind . . ." (Emphasis added).

²⁶ 11 Fed. Reg. 4459, Ch. II, Sub-chapter E, 46 C. F. R., Part 299. These were revised by Gen. Order 60, 22 F. R. 11103, Dec. 31, 1957, codified in the same portion of the Code of Federal Regulations.

²⁷ Now Section 299.66, 46 C. F. R. Appendix A, *infra*, A-13.

paragraphs under Section 9(b). In each of the numbered paragraphs under 299.51(d) it was carefully pointed out that the credit was being made "for the purposes of subparagraph (8) of this paragraph (d)".²⁸ Subparagraph (f) of Section 299.51, entitled "Method of Adjustment," makes more specific the adjustment to which Section 9(b) of the Act refers and reads as follows:

"If the Administration finds that the applicant is entitled to an adjustment, applicant will be notified of the *adjusted purchase price* determined by the Administration. Unless the applicant notifies the Administration to the contrary within 15 days following the date of receipt by the applicant of the Administration's determination of *adjusted purchase price*, this *adjusted purchase price* will be binding upon applicant and it agrees to execute an *addendum to its original contract to purchase*, which addendum will be sent to him by the Administration." (Emphasis added.)

The form of application for such adjustment was set out in Section 299.87²⁹ of those Regulations and was entitled "Application for Adjustment of Purchase Price." The method of adjustment, as set out in subparagraph (f) of the Regulation, was also set out as Section F of the Application.

On May 31, 1946, Petitioner filed an application under Section 9 of the Act for an adjustment in price under the Act of the 18 vessels owned and purchased by it from the Government. On December 30, 1946, Petitioner and the Government (acting through Maritime) entered into an "Interim Agreement" for adjustment of price sales of

²⁸ This wording is contained in each of the paragraphs providing for computations of credits. See Appendix A, *infra*, A-15 through A-17.

²⁹ Now Section 299.133, 46 C. F. R. See Appendix A, *infra*, A-19.

vessels to citizens, pursuant to Section 9 of the Act, Contract No. MCo-42281.³⁰ At the conclusion of ARTICLE XII of the Interim Agreement, it was agreed that the net credit to the Applicant on account of such interim adjustment "shall be credited by the Commission on the adjusted mortgage indebtedness of the Applicant and applied on the unpaid installments thereof with respect to such vessels as may be designated by the Applicant." ARTICLE XVIII of Interim Agreement provided as follows: "Applicant and the Commission further agree that when final adjustment and settlement of this Agreement is made as herein provided for, such adjustment and settlement shall constitute and become full, final and complete discharge of the respective liabilities of the parties one to the other, (1) under the terms of the contracts by virtue of which Applicant required from the Commission title to the war-built vessels herein named and (2) pursuant to the provisions of the Act."

On January 3, 1951, the Chief of the Division of Claims of Maritime wrote to Petitioner and submitted revised schedules, reflecting "the final adjustment" with respect to each of the eighteen vessels involved, before taking into account any overpayment or deficiency in federal taxes resulting from application of Section 9(c)(1) of the Act, to be furnished by the Bureau of Internal Revenue." On Sheet 6 of Schedule II, enclosed with that letter, item 18 is as follows: "18. Total net credit to owner before tax adjustment . . . \$20,038,698.41",³¹ which is the sum of the adjustment in mortgage indebtedness under Paragraph (3) and the net cash credit to Petitioner under Paragraph (8).

³⁰ Exhibit S-1 to Petitioner's Exhibit F, Par. 5, R. 42; Appendix D, *infra*, D-1. See note 6, *supra*.

³¹ Par. 6, Petitioner's Exhibit F, R. 43; Exhibit S-2 to Petitioner's Exhibit F, Appendix D, *infra*, D-18. See note 8, *supra*.

On June 11, 1951, the "Final Agreement for Adjustment for Prior Sales Pursuant to Section 9 of the Merchant Ships Sales Act of 1946", Addendum No. 1 to Contract No. MCE-42281, between Petitioner and the Government (acting through Maritime), was made and entered into.³² ARTICLE 1 identified each of the war-built vessels and the construction contract and purchase contract applicable to it (R. 52); ARTICLE 2 pertained to credits in favor of Applicant (R. 53); ARTICLE 3 pertained to credits in favor of the Government (R. 55); ARTICLE 4 pertained to net cash credits and stated that "The net amount of the final cash adjustment in favor of the Applicant under Section 9 of the Act is \$2,917,112.19, . . ." (R. 56); ARTICLE 5 pertained to the mortgage adjustment and disposition of Applicant's net cash credits (R. 56-7); and ARTICLE 7 contained a provision similar to ARTICLE XVIII of the Interim Agreement, pertaining to the finality of the settlement (R. 59).

Thus in its Regulations and in its various agreements with Petitioner Maritime treated the formula in Section 9(b) as unitary by netting the various credits and did not divide the computations into an adjustment in purchase price and into certain cash credits for purposes of payment only. Under these circumstances, although Petitioner maintains the statutory language is clear and unambiguous, the holding in *Federal Housing Administration v. The Darlington*, 358 U. S. 84, 90, 79 Sup. Ct. 141, 3 L. Ed. 2d 132 (1958) is appropriate:

"* * * The contemporaneous construction of the Act by the agency entrusted with its administration is squarely to the contrary. In circumstances no more ambiguous than the present we have allowed

³² R. 51, Exhibit S-3 to Petitioner's Exhibit F.

contemporaneous administrative construction to carry the day against doubts that might exist from a reading of the bare words of a statute. * * *"

It is also pertinent that the issue as to the basis of the vessels has been raised by the Internal Revenue Service, an agency which had nothing to do with the basic administration of the Act, a fact which it has recognized.³³

However, the Government attempts to bolster its argument by contending that the charter hire which Petitioner received on the vessels and for which a credit was given to the Commission under Paragraph (6) of the formula contained in Section 9(b) is a non-capital item and therefore cannot be counted in determining basis. It is basic tax law that monies received for the sale of property do not change their character merely because of the fact that the purchase price is predicated upon other facts, such as gross income or net income from the property. See *Commissioner v. Hopkinson*, 126 F. 2d 406 (2nd Cir., 1942); *Massey v. U. S.* 226 F. 2d 724 (7th Cir., 1955); *Edward C. Myers*, 6 T. C. 258 (1946).³⁴ Also it must be recalled that Section 9(b) is a

³³ "The determination of the applicability of the Act to a specific vessel, the amount of the adjustment, and the responsibility for entering into an agreement with the applicant as to the application of Section 9(c)(1) of the Act are matters within the jurisdiction of the Commission. The act confers no authority to function in these matters upon the Bureau of Internal Revenue." Mimeograph 6366, 1949-1 Cum. Bull. 270. (Emphasis added.)

³⁴ Suppose as an example a sale of income producing property such as a vessel either for a contingent price or with a "most-favored-customer" clause (that is, that if a similar vessel is subsequently sold by the seller for a lesser price, the earlier purchaser will get the benefit of the reduced price), the formula for final determination in each to be similar. The original purchase price is to be adjusted based upon interim events such as earnings (or losses), expenses incurred in production of income (normal as well as taxes on the property or on the earnings), and similar factors. Would anyone contend that the adjusted purchase price, in either event, would not be the original price less the adjustment, although such factors as earnings, net or gross, expenses, losses and taxes were a measure of the adjustment?

fiction or hypothesis used solely for the purpose of making certain determinations leading to a price adjustment. Included in the complicated formula are factors which are *measured* by certain hypothetical events, none of which actually or legally took place. The fact that the purchase price of property is determined by reference to or measured by other factors does not change the amount or the status of the purchase price.

Thus a careful reading of the Act, the regulations of Maritime and the Contract between the Government and Petitioner implementing it leads to no doubt of its meaning, its application and its effect. There is nothing in the Act to support the Government's theories (1) that the formula contained in Section 9(b) is really two formulas with differing computations, purposes and results and (2) that the one net total adjustment in purchase price under that Section was not the sum of the initial adjustment in mortgage indebtedness under Paragraph (3) and the net cash credit to Applicant under Paragraph (8). Also there is nothing in the Act that would change, or exempt the transaction from, the usual Code provisions for determining the basis of property for depreciation purposes.

3. The Delaware District Court and the Court of Appeals for the Fifth Circuit erroneously interpreted the clear language of Section 9.

As indicated before, the Act is not a tax statute. Its principal purpose is the disposal of merchant ships. However, as in the case of many statutes whose principal purpose is other than tax, it has tax effects. The point at issue

is whether these tax effects are provided for specially in the Act or are left to the usual Code provisions or rules. There is no dispute between the parties as to the meaning and effect of Section 9 of the Act as to its principal purpose, the adjustment in purchase price of Petitioner's 18 vessels. This was agreed upon and consummated by written contract and the facts stipulated by the parties.

What does the Act provide, if any, as to the tax effects of Section 9? It contains only two sections with any reference whatsoever to taxes. These are subsections (c)(1) and (b)(8) of Section 9 of the Act; but neither says anything whatsoever with regard to the basis for tax purposes of a vessel whose price is adjusted under that section. Thus, there is no statutory rule or provision set out in the Act which would change the normal application and effect of Section 113 of the Code.

How did the lower courts then determine otherwise? The Delaware Court commences by asserting that "Section 9 is sufficiently unclear to justify resort to legislative history" (At p. 590). Then it cites four factors in the statute itself to support the Government's argument.³⁵ First it quotes that portion of Section 9(b) which states that "Such adjustment shall be made . . . by treating the vessel as if it were being sold to the applicant on the date of the enactment of this Act, . . . and not before that time." We have already recognized that Section 9 operates under a statutory fiction. However, it is quite apparent that this fiction

³⁵ That Court, however, by concluding that "The presence of logical arguments supporting two interpretations of the same language compel the conclusion that the statute is ambiguous" (at p. 591), at least concedes that the statutory language also logically supports Petitioner's position.

is to apply *only* to obtain the adjustment in price and not for all purposes.

Then the Delaware Court quite erroneously and with no justification from the form or wording of the statute attempts to divide paragraphs (1) through (8) of Section 9(b) into two separate or different modes of adjustment, contemplating two severable transactions (p. 590). However, it is interesting to note that the Court, in its outline of the facts leading to the net credit to the Government (pp. 587-8), did not treat those paragraphs as providing two different modes of adjustment. Instead each of the paragraphs providing for a credit to the applicant or to the Commission was given effect by the Court (p. 588). However, in its subsequent analysis of these paragraphs (at p. 590), that Court attempted to distinguish between the credits and adjustments in the first three³⁶ paragraphs and those in the last four paragraphs of that section. In so doing, the Court inexplicably but erroneously ignored the clear wording of the initial paragraph of Section 9(b) that "*Such adjustment shall be made as hereinafter provided, . . . The amount of such adjustment shall be determined as follows:*" followed by eight numbered paragraphs. The Court attempts to bolster this position by stating that Plaintiff admits that, if the statute stopped after the first three paragraphs, the adjusted purchase price would be the statutory sales price.³⁷ However, this admission simply recognizes the plain and literal reading of this isolated seg-

³⁶ Actually first four paragraphs, although Paragraph (4) did not apply in that case.

³⁷ See p. 587, note 4, and p. 590.

ment of the statute³⁸ followed by the application of the usual Code rules thereto.³⁹

However, the District Court then goes on to support its bifurcation of Section 9(b) by pointing out how the statu-

³⁸ Note the difference between Section 9(c) of the Senate amendment of H. R. 3603, Appendix C, *infra*, p. C-3; which provides that "The amount of the adjustment under this section shall be the excess of (1) the purchase price of such vessel . . . over (2) the statutory sales price of the vessel . . . and Section 9(b) of the Act, as adopted, which provides that "The amount of such adjustment shall be determined, as follows: . . . Although the statute is quite awkwardly worded, one can determine the adjusted purchase price without having such price actually set out in so many figures. Nowhere in the Interim or Final Contract between Petitioner and the Government is the adjusted purchase price set out. However, if two persons enter into a contract for the purchase and sale of property, which contract provides for the amount of the cash payment and the amount for which purchaser is obligated to pay in the future, as evidenced by a note and secured by a mortgage, no one would deny that the sum of those two amounts would be the purchase price, even though such sum was not, in fact and as such, set out in the contract. This is the situation at hand. The original purchase price and the cash payments made thereon through March 7, 1946, have been stipulated by the parties. Therefore, in arriving at the adjusted purchase price where the original cash payments and the balance of the mortgaged indebtedness prior to the application of Section 9 are known, any refund of, or payment in addition to, the payments already made, and any adjustment in the remaining mortgage indebtedness would enable any one by simple addition and subtraction to ascertain the adjusted purchase price.

³⁹ Had Section 9(b) stopped after paragraph (3), Petitioner would have been credited with \$11,735,950.74 under paragraph (1), which applied against the total cash paid as down payment and in reduction of mortgage indebtedness through March 7, 1946, of \$16,235,466.21, would have left Petitioner with a cash investment in the vessels of \$4,449,495.47 (R. 44); and if Petitioner's remaining mortgage indebtedness, as of March 7, 1946 had been adjusted under paragraph (2) and (3) to \$13,185,928.93 (R. 45), the sum of the adjusted mortgage indebtedness plus the cash paid would have been \$17,997,981.84, the statutory sales price. (R. 49) See computation X, Appendix E, *infra*, E-3. This would have been Petitioner's investment in, and therefore the cost basis of, the vessels. This would follow, however, not from any provision in the Act fixing statutory sales price as the basis for Section 113 purposes but by reason of the usual rules under Section 113.

tory language in paragraphs (5) and (6) differs from that in paragraph (3).⁴⁰ The Court then follows the Government's argument and looks only to the respective credits called for under paragraphs (5) through (8), ignoring entirely the fact that paragraph (1) also calls for the making of a credit.⁴¹ The Court then concludes (p. 590): "... These sections look to the immediate exchange of cash after all the credits and debits have been added; Congress has so provided. The *two different modes of adjustment* suggest that Congress contemplated *two severable transactions*" (emphasis added). However, if the credit required under paragraph (1) is included with the credits required under paragraphs (5) through (8), as so clearly required by the statute,⁴² the results reached by the Court, and argued for by the Government, do not follow. If all of the paragraphs of Section 9(b) are applied, as plainly and literally required by the Act, in the same manner as paragraphs (1) through (3) were applied above to arrive at an adjusted purchase price equal to the statutory sales price (on the assumption the adjustment stopped there), a net cash credit is due Petitioner of \$2,917,112.19. This is so found and so provided in ARTICLE 4 of the Final Agreement between Petitioner and the Government. (R. 56) If this

⁴⁰ The former two start out "the Commission [or the applicant] shall credit the applicant [or the Commission] . . ."; whereas, paragraph (3) provides that "The adjusted mortgage indebtedness shall be in an amount equal to . . ." See appendix A, *infra*, A-6 and A-7.

⁴¹ "(1) The Commission shall *credit* the applicant with the excess of the cash payments made upon the original purchase price of the vessel over 25 per centum of the statutory sales price of the vessel . . ."

⁴² Paragraph (8) clearly states "There shall be subtracted from the sum of the credits in favor of the commissions *under the foregoing provisions of this subsection* . . . and there shall be subtracted from the sum of the credits in favor of the applicant *under the foregoing provisions of this subsection* . . ." (emphasis supplied).

had been paid in cash, as paragraph (8) provides, and as the Delaware Court recognized,⁴³ Petitioner would have received back this sum and therefore its investment in, and the cost basis of, the 18 vessels would have been \$26,680,139.15, the amount contended for by Petitioner.⁴⁴

Then the Delaware Court stated (p. 590): "If the legislature intended that all the adjustments be considered part of cost, it would have been logical to provide that all adjustments be applied first to the mortgage indebtedness."⁴⁵ However, it makes no difference whether the credit had been paid to the Petitioner, in which case, it would have reduced his payments in cash or had been applied against the mortgage indebtedness; thereby reducing his obligation to pay for the property purchased. In either case, so far as determining the cost of the property to the taxpayer and its tax basis, the result would have been the same. However, in the Interim Agreement entered into by the Petitioner and the Government on December 30, 1946, it was agreed (ARTICLE XII) that the net credit to Petitioner "shall be credited by the Commission on the adjusted mortgage indebtedness of the Applicant and applied on the unpaid installments thereof with respect to such vessels as may be designated by the Applicant." This Agreement was carried out by ARTICLE 5 ("Mortgage Adjustment and Disposition of Applicant's Net Cash Credits") in the Final Agreement (R. 56)⁴⁶.

⁴³ "These sections look to the immediate exchange of cash after all the credits and debits have been added" (p. 590).

⁴⁴ See computation XI, Appendix E, *infra* E-3.

⁴⁵ Citing note 17 in which it stated: "It should be noted that the Commission, in this case, actually applied all the adjustments against the mortgage. This is conceded to be erroneous and contrary to the statute."

⁴⁶ However, the Delaware Court was quite in error in its observation in note 17 because the action which the Court termed as

The Delaware Court also said that the provision of Section 9(c)(2) limiting the Government's liability for the loss of a vessel adjusted under Section 9 and chartered to the Government, to the statutory sales price depreciated to the date of loss, supports the Government's theory, concluding that (p. 591); "... If the new price is not the statutory sales price, this provision is without meaning ...". This is not so, however. In the absence of this provision, the liability of the Government would have been set by the

"erroneous and contrary to the statute" was required by the Independent Offices Appropriation Act, 1948, 61 Stat. 585, 604, which provided as follows:

"Whenever, in connection with any transaction involving the sale, purchase, or requisition of any vessel, the United States shall be or become obligated to pay any sum to the other party to the transaction and said other party shall be or is indebted to the United States on account of any transaction involving the sale, purchase, or requisition of any vessel, the amount so owing to the United States shall be deducted from the amount due the other party, and no officer or employee of the Government shall pay to such other party a sum greater than the net amount owing the other party."

This provision is written in terms purporting to be of general application. However, its legislative history shows unequivocally (1) that Congress was of the opinion that the "net cash credit" or "cash adjustment" computed pursuant to Section 9(b)(8) of the Act was for the purpose of determining a part of the refund or rebate in purchase price granted under Section 9 of the Act, and (2) that the specific and primary purpose of the provision was to amend or repeal that part of Section 9(b)(8) which required such part of the refund or rebate in purchase price to be "paid" to the Applicant and to require that it be applied in reduction of any existing mortgage indebtedness on the vessel, as of March 8, 1946. See Hearings on the Independent Offices Appropriation Bill for 1948 before the Subcommittee of the Committee on Appropriations, House of Representatives, 80th Cong., 1st Sess.; H. Rept. No. 589, 80th Cong., 1st Sess., dated June 13, 1947, reporting on the Independent Offices Appropriation Bill, 1948, at p. 31; and *National Bulk Carriers v. Warren*, 82 F. Supp. 511, 513 (D. D. C. 1949).

terms of the charter,⁴⁷ or by the normal rules under Section 902 of the Merchant Marine Act, 1936,⁴⁸ either or both of which may have differed from the statutory sales price (or for that matter from the original purchase price adjusted under Section 9).

Finally the Delaware Court cites (at p. 591) the heading of the statutory section "adjustment for prior sales to citizens" as against the heading in the U. S. Code "price adjustment" in support of its holding for the Government. Even without a heading, however, it is clear that the adjustment can mean only a price adjustment. This would not be a reason to support the Government's position but might follow if, in fact, the Section pertained by language or form to an adjustment other than price.

⁴⁷ See Clause J, amending the First paragraph of Option II of Clause C, Part I, of the charter on the Hastings, Exhibit 59 and also Exhibit 30, both to Plaintiff's Exhibit G. (R. 150, 152, 154-5 and 159-60)

⁴⁸ 49 Stat. 2015, c. 858; 46 U. S. C. 1242 (1952 ed.) ; subsection (a) of which provides in part ; "Whenever the President shall proclaim that the security of the national defense makes it advisable or during any national emergency declared by proclamation of the President, it shall be lawful for the Secretary of Commerce to requisition or purchase any vessel or other watercraft owned by citizens of the United States, or under construction within the United States, or for any period during such emergency, to requisition or charter the use of any such property . . . When any such property or the use thereof is so requisitioned, the owner thereof shall be paid just compensation for the property taken or for use of such property, but in no case shall the value of the property taken or used be deemed enhanced by the causes necessitating the taking or use. * * *"

Subsection (b) pertains to the value of a vessel so requisitioned for use or purchased when it was originally acquired under a construction differential subsidy (with which none of Petitioner's 18 vessels were constructed) and provides in part ; "When any vessel is taken or used under authority of this section, upon which vessel a construction-differential subsidy has been allowed and paid, the value of the vessel at the time of its taking shall be determined as provided in section 1212 of this title, * * *" (referring to Section 802 of that statute).

The Third Circuit recognized "that the statute does not specifically state which figure is to be used for applicant's cost basis for depreciation purposes" (p. 410).—It cites nothing to show any doubt or ambiguity in the statute but, relying solely on the argument to the contrary of the Government, proceeds to examine the statutory scheme together with the legislative history of the Act. However, it does not even bother to analyze the statute but looks solely to its legislative history. Since it found nothing in the statute either to specifically fix the basis of a vessel for depreciation purposes or to prescribe rules for determining such basis other than the usual ones under the Code, the latter should and do apply.

The majority opinion of the Fifth Circuit gives only a cursory treatment to the language of the Act and even this is coupled with the legislative history of the Act and is stated more in the form of conclusions than analyses. At most it is a brief synopsis of the Government's argument and relies entirely on the opinion of the Delaware Court. Contrast this with the thoughtful and comprehensive analysis of Circuit Judge Cameron, dissenting (p. 133), and with that of the Court of Claims in the *Socony* case and of the Alabama Court in the instant case. After carefully setting out the statutory provisions of Section 9(b) and the computations thereunder, the Court of Claims concluded as follows (p. 913):

"Congress could, of course, have provided that a former purchaser of ships who desired to take advantage of the readjustment of price offered him by section 9 should, as a condition of the readjustment, obligate himself to compute future depreciation on a basis other than actual cost. Congress could have done this expressly, or by writing a text from which such an implication would necessarily result. Con-

gress has not done so expressly, and we do not find that it has shown an intent to do so."

The Alabama Court stated the question at issue and its conclusions as follows (pp. 929-30):

"The defendant sets forth several different methods of adjusting the figures to arrive at its alleged basis. But permeating this issue is a single inquiry: For purposes of computing depreciation under Section 113 of the Internal Revenue Code, are the proper bases the statutory sales prices, as defined in Section 3(d), or the actual economic investment and cost after making the adjustment pursuant to Section 9(b)?

"... Section 9 of the Act is not a tax statute and it does not purport to provide the tax bases of vessels whose purchase prices have been adjusted thereunder. The tax bases of the eighteen vessels must be determined under the Internal Revenue Code. Sections 23(n) and 114(a) thereof provide for the allowance of depreciation computed on the basis of the property as determined under Section 113. Section 113(a) sets forth the general rule applicable to the present case as follows: 'The basis of property shall be the cost of such property * * *'

"I agree with plaintiff that the cost basis in the instant case can best be determined by comparing the economic cost of the vessels to the plaintiff the moment before and the moment after the Act became effective. The parties have stipulated that plaintiff's economic investment in the vessels as of March 7, 1946, was \$47,149,043.42. The parties also stipulated that as a result of section 9 adjustments the original mortgage indebtedness was reduced \$20,468,904.07. This latter sum, plus a cash payment of \$86,037.70 as of March 8, 1946, left an outstanding mortgage indebtedness of \$10,182,779.04 on March 8, 1946.

"The court finds the plaintiff's economic investment in these vessels, and consequently its cost basis of the vessels as of March 8, 1946, to be \$26,680,139.35

4. Lower Courts erroneously referred to legislative history of Section 9 of Act.

Not a one of the lower courts, either on original trial or on appeal, have pointed to any word or phrase or part of Section 9 as having or leading to a doubtful or ambiguous meaning. They have recognized that there is no specific provision in Section 9 of the Act fixing the basis of a vessel, whose original purchase price is adjusted, for purposes of depreciation and have pointed to no provision providing, or from which it may be inferred, that such basis shall not be determined under the usual Code provisions and rules. Under such circumstances, these Courts were in error in going beyond the clear wording and provisions of the Act on the grounds that the intent of Congress was not clear or that the statute was possibly ambiguous (not by its wording but simply because the Government argued for an interpretation without support in the language and form of the Act).

The usual rule has been stated that, "Where the language is plain and admits of no more than one meaning, the duty of interpretation does not arise, and the rules which are to aid doubtful meanings need no discussion." *Caminetti v. United States*, 242 U. S. 470, 37 Sup. Ct. 192, 61 L. Ed. 442 (1916). Chief Justice Vinson, speaking for this Court in *Ex parte Collette*, 337 U. S. 55, 61, 69 Sup. Ct. 944, 93 L. Ed. 1207 (1949), put the matter, in a similar situation, as succinctly and emphatically as pos-

⁴⁹ See also *Barber Oil* at pp. 459-60.

sible: "Petitioner's chief argument proceeds not from one side or the other of the literal boundaries of Section 1404(a), but from its legislative history. The short answer is that there is no need to refer to the legislative history where the statutory language is clear. 'The plain words and meaning of a statute cannot be overcome by a legislative history which, through strained processes of deduction from events of wholly ambiguous significance, may furnish dubious bases for inference in every direction.'" *Gemsco, Inc. v. Walling*, 324 U. S. 244, 260, 89 L. Ed. 921, 933, 65 Sup. Ct. 605 (1945). This canon of construction has received consistent adherence in our decisions." (with note, citing cases).⁵⁰

In *Commissioner v. Korell*, 339 U. S. 619, 70 Sup. Ct. 905, 94 L. Ed. 1108 (1950), this Court, recognizing that Congress could have provided for a more narrow definition of the term "premium" in the statute there being construed so as to disallow an amortization deduction and thereby increase the tax, concluded (pp. 615-6):

"But we cannot reject the clear and precise avenue of expression actually adopted by the Congress because in a particular case we may know, if the bonds are disposed of prior to our decision, that the public revenues would be maximized by adopting another statutory path . . . it cannot be argued that Congress lacked the legislative discretion to have reached such a conclusion."

When Congress passed amendatory legislation to meet this decision, this Court was shortly faced with the construction of the amendment and particularly which call

⁵⁰ In general, see Sutherland, *Statutes and Statutory Construction* (3rd Ed. by Horach), Vol. 2, Sections 4502-3 and 4706.

price applied. This Court, in holding for taxpayer in *Hanover Bank v. Commissioner*, 369 U. S. 672, 82 Sup. Ct. 1080, 8 L. Ed. 2d 187 (1962), concluded (p. 687):

“A firmly established principle of statutory interpretation is that ‘the words of statutes—including revenue acts—should be interpreted where possible in their ordinary everyday senses.’ *Crane v. Commissioner*, 331 U. S. 1, 6. The statute in issue here, in plain and ordinary language, evidences a clear congressional intent to allow amortization with reference to any call date named in the indenture. Under such circumstances we are not at liberty, notwithstanding the apparent tax-saving windfall bestowed upon taxpayers, to add to or alter the words employed to effect a purpose which does not appear on the face of the statute . . .”

Since the statutory language here is clear, the applicable statutory rule of construction is, therefore, well established by the foregoing decisions. The statute should be given its plain meaning.

5. The Lower Courts erroneously interpreted the legislative history of Section 9.

Although contending that the statute is clear and unambiguous in its provisions and organization, making unnecessary any resort to extrinsic aids for the purpose of interpretation of its meaning, intent and effect, Petitioner recognizes that the American rule, unlike the English rule, allows the examination of the legislative history of a statute for purposes of construction and interpretation. However, where the meaning of the statute on its face or by its terms is clear, then such search should not be for

the purpose of raising doubts where none existed,⁵¹ or if such doubts are raised by such search, then the meaning should be the otherwise undoubtful meaning of the statute.⁵²

- (a) The legislative materials considered by the lower courts either were not relevant or did not support Government's contention.

Since the statute itself is clear, the position of the Government, and of the lower courts cannot be sustained if a study of the legislative environment⁵³ either (1) fails to

⁵¹ *Railroad Commission of Wisconsin v. Chicago B & Q Railroad Co.*, 257 U. S. 563, 589, 42 Sup. Ct. 232, 66 L. Ed. 371 (1922). ("... Committee reports and explanatory statements of members in charge, made in presenting a bill for passage, have been held to be a legitimate aid to the interpretation of a statute where its language is doubtful or obscure. (citing case) But when, taking the Act as a whole, the effect of the language used is clear to the Court, extraneous aid like this cannot control the interpretation. (citing cases) Such aids are only admissible to solve doubt, and not to create it. For the reasons given, we have no doubt in this case.")

⁵² *Association of Westinghouse Salaried Employees v. Westinghouse Electric Corp.*, 348 U. S. 437, 441, 75 Sup. Ct. 489, 99 L. Ed. 510 (1955). ("This examination would conclude the construction of the section by English Courts, that is, by any court reading legislation as it is written without drawing on parliamentary debates. And considering that the construction that we have found seems plain, the so-called 'plain meaning rule' on which construction is from time to time rested also in this Court, likewise makes further inquiry needless and indeed improper. But that rule has not dominated our decisions. The contrary doctrine has prevailed. (citing cases) And so we proceed to an examination of the legislative history to see whether that raises such doubts that the search for meaning should not be limited to the statute itself.")

⁵³ *Sims v. United States*, 359 U. S. 108, 112, 79 Sup. Ct. 641, 3 L. Ed. 2d 667 (1959). "Intent" of Congress with regard to any law passed by it is at best nebulous, when one considers the number of members in each house, the various reasons, expressed or unexpressed, why each member constituting a majority supports the bill and numerous other contingent and unknown factors. How-

show the specific intent or meaning contended for by the Government or (2) shows no intent or meaning. A mere raising of doubt as to the intent will call for the return to the meaning as indicated on the face of the statute. The meaning or intent for which this search is made relates to the tax cost basis of a vessel whose original purchase price is adjusted pursuant to Section 9 of the Act.

The Act had its genesis as early as the 78th Congress, Second Session (1944) when H. R. 4486 was introduced and hearings on that bill were held before the Committee of the Merchant Marine and Fisheries of the House of

ever, where the statute is quite complex and controversial, the task of ascertaining Congressional "intent" as to each provision is most difficult, if not impossible. The Act is just such a complex statute and was under consideration in two different Congresses over a period of two years.

"The bill is one of the most difficult bills that I have had anything to do with in my 27 years of service in this House. It far exceeds the 1936 Act, which was considered by the Committee on Merchant Marine and Fisheries while I was serving as chairman. These are more complications; less unanimity among interests that ought to be united in presenting a bill. More questions have arisen than in any other bill we have considered. Its preparation has taken much more time than I could have desired and believed was possible, because we have gone over the bill many times, considered many points, and tried to reconcile as nearly as we could, the various opposing interests. I doubt very seriously that any member of the committee would endorse every provision of the bill. It is a result of compromise . . ." (Chairman Bland, Committee on Merchant Marine and Fisheries, 97 Cong. Rec., Part 7, p. 9162).

"Mr. Chairman, this has been a very involved, controversial and complicated piece of legislation to work out . . ." (Mr. Bradley, *op. cit. supra*; p. 9164).

"Mr. Chairman, this bill H. R. 3603, is perhaps the most complicated and technical measure which has been before this body in more than a year . . ." (Mr. Burk, *op. cit. supra*, p. 9192).

"Mr. Chairman, at the outset the House should know the long and tedious work the Merchant Marine Committee has given the four different bills that have been presented to it dealing with this subject . . ." (Mr. Bonner, *op. cit. supra*, p. 9193).

Representatives.⁵⁴ Under this bill, Petitioner would have received an adjustment in its sales price sufficient to reduce that price to an amount equal to the statutory sales price. Thus its economic investment in, and cost basis of, these vessels for tax purposes would have been an amount which also was equal to the statutory sales price.⁵⁵

As a result of these hearings, another bill, H. R. 5213, was introduced in that session of the Congress. This was referred to the same House Committee, but was not reported out. Subsection (e) of Section 1 of that bill was similar to the same section of H. R. 4486.⁵⁶ However, a substitute text was proposed by the Committee and printed on November 16, 1944.⁵⁷ Again Section 5 of the substitute bill, headed "Adjustment of Prior Sales", the same adjustment in purchase price would have been made to the vessels of Petitioner with the same result, i.e., the cost basis to Petitioner after receipt of the adjustment would have been an amount which was equal to the statutory sales price.

⁵⁴ See H. Rep. No. 831, 79th Cong., 1st Sess., to accompany H. R. 3603, dated June 28, 1945, House Committee on the Merchant Marine, 1945 U. S. Code and Cong. Ser., p. 1086. See H. R. 4486, Appendix B, *infra*, B-1.

⁵⁵ See Section 1(e) of H. R. 4486, Appendix B, *infra*, B-3. Although the means and manner of such adjustment were not set out, either (1) the mortgage indebtedness would have been reduced to the difference between the cash payments theretofore made and the statutory sales price, or, in Petitioner's case, \$1,762,535.63 (adjusted for the adjusted value of 4 vessels traded) or (2) the mortgage indebtedness would have been reduced to 75% of statutory sales price (\$13,498,486.37) and a cash refund would have been made to Petitioner in the amount of \$11,735,950.74 (plus adjusted value of 4 vessels). See computation XII, Appendix E, *infra*, E-3.

⁵⁶ See Appendix B, *infra*, B-5 and B-8.

⁵⁷ See Hearings before the Committee on the Merchant Marine and Fisheries, House of Representatives, 79th Cong., 1st Sess., on H. R. 1425, Part 1, p. 463. Appendix B, *infra*, B-12 and B-18,

No action was taken on the bills introduced in 1944 and in the 79th Congress, 1st Session (1945) H. R. 1425 was introduced, referred to the Committee on Merchant Marine and Fisheries of the House and hearings thereon were held by that Committee.⁵⁸ Section 5 of that Bill, entitled "Adjustment for Prior Sales" was the same as section 5 of the Substitute H. R. 5213 proposed at the previous Congress.⁵⁹ For the first time, a bill, S. 292, was introduced in the Senate. This was referred to a Subcommittee of the Committee on Commerce and hearings were held before that Subcommittee.⁶⁰ Section 5 of S. 292 was the same as Section 5 of H. R. 1425.⁶¹ Up to this point in the legislature history of the Act, the present problem could not have arisen inasmuch as economic investment after a price adjustment would be an amount always equal to statutory sales price.

At the conclusion of 10 days of hearing on H. R. 1425 before the House Committee, the bill was then considered in executive session over a period of more than six weeks. As a result of this consideration and the decisions made therein, the Committee requested that a new bill be introduced embodying the decisions and views of the Committee. This new bill, H. R. 3603, was introduced and reported favorably by the Committee to the House.⁶² Section 9 of that bill was entitled "Adjustment in Sales Price of Vessels

⁵⁸ See Hearings Before the Committee on the Merchant Marine and Fisheries, House of Representatives, 79th Cong., 1st Sess., on H. R. 1425.

⁵⁹ Appendix B, *infra*, B-23 and B-29.

⁶⁰ See Hearings before a Subcommittee of the Committee on Commerce, United States Senate, 79th Cong., 1st Sess., on S. 292.

⁶¹ Appendix B, *infra*, B-29, B-35 and B-41.

⁶² See H. Rept. No. 831, 79th Cong., 1st Sess., to accompany H. R. 3603, dated June 28, 1945. See Appendix B, *infra*, B-47.

Sold Prior to Enactment of the Bill," and contained for the first time a price adjustment formula embodying the fiction of treating the prior sale as if the *bill* had been in effect at the time of the *sale*.⁶³

At the time the House considered this bill in October, 1945, an amendment to Section 9 of the bill was proposed on the floor of the House, as the recommendation of a Subcommittee of the House Committee which had reported the bill out. This amended Section 9 was part of the bill adopted on October 2, 1945 and drastically changed the content and approach of Section 9 as contained in original H. R. 3603.⁶⁴ (Original 3603 was the bill referred to and

⁶³ Appendix B, *infra*, B

⁶⁴ See 91 Cong. Rec. 9158-9202 (Part 7), particularly at pp. 9201-2 and 9269-9289, particularly at p. 9281; also Appendix B, *infra*, B

"At a session of the Committee only last Friday morning, however, two far-reaching amendments were adopted by the Committee which should be defeated. These amendments *rewrite and completely change* Sections 9 and 12.

"The circumstances under which the Committee adopted these two amendments are interesting and remarkable. Twenty-one members comprise the Committee. The Committee amendment to Section 9 was adopted by a positive vote of 7 members . . . Thus 7 . . . members . . . out of a committee of 21, made fundamental last-minute changes in a bill on which the Committee had labored for months on end. . . .

"But now at the eleventh hour and the fifty-ninth minute, the Committee proposes an amendment thereto, the text of which was not presented to the Committee until last Friday morning. Those favoring the amendment . . . state that its terms are simple, . . . yet, this 'simple' amendment requires three and one-half pages of closely typed text so involved and complicated as to require the services of a corps of Philadelphia lawyers, certified public accountants and statisticians for a clear understanding . . . (Congressman Buck, *op. cit. supra*, p. 9192). (emphasis added)

" . . . As the bill is presented to you on the floor it is not the bill that the majority of the Committee hoped to see passed by the House." (Congressman Bonner, *op. cit. supra*, p. 9193.)

explained in H. Rept. No. 831.⁶⁵) Despite this drastic amendment of Section 9, however, which resulted in the two versions of Section 9 being quite different and not comparable on this issue, the lower courts erroneously referred to and quoted from the Committee report made *before* the amendment.⁶⁶

The Senate Committee on Commerce was, at that time, holding hearings on S. 292, and on December 4 (legislative day, October 29), 1945, made its report,⁶⁷ in which the Committee recommended a bill striking all the provisions after the enacting clause of H. R. 3603 as passed by the House and containing a substitute version similar to former S. 292.⁶⁸ H. R. 3603, as so amended and recommended by the Senate Committee, was adopted by the Senate. The bills (H.R. 3603 and the Senate amendment of H.R. 3603) were then referred to a Conference Committee. The bill, as reported and recommended to both the House and the Senate by this Committee⁶⁹ was adopted by both the House and the Senate as Public Law 321, effective March 3, 1946.⁷⁰

"Mr. Chairman, if the House adopts this amendment, it will be acting without benefit of knowledge, without benefit of analysis. Under these circumstances the amendment should be defeated" (Congressman Buck, *op. cit. supra*, p. 9283).

⁶⁵ See pp. 12-13 of H. Rept. No. 831; 91 Cong. Rec. (Part 7) 9185 (comments of Congressman Jackson), 9192 (comments of Congressman Buck), 9194 (memorandum of Congressman Bonner), 9197, 9199 and 9282 (comments of Congressman Jackson), 9283 (comments of Congressman Bradley).

⁶⁶ See Delaware Court in *National Bulk*, p. 592, and notes 26 and 31 thereon; also Third Circuit, p. 410 (lengthy quotation from Report).

⁶⁷ S. Rep. No. 807, 79th Cong., 1st Sess., Committee on Commerce, to accompany H. R. 3603, dated December 4, 1945.

⁶⁸ Appendix B, *infra*, B-78.

⁶⁹ See Conf. Rep. No. 1526, 79th Cong., 2nd Sess., to accompany H. R. 3603, dated February 6, 1946.

⁷⁰ Appendix B, *infra*, B-96.

The lower courts also referred to and relied upon the Senate Report, which, like the House Report, concerned a Section 9 which was quite different from that contained in the bill as finally adopted.⁷¹

- (b) The lower courts erroneously interpreted the legislative history of Section 9 and arrived at the wrong conclusion as to its purpose and effect.

Petitioner contends that a correct analysis of the legislative history of Section 9 will conclusively show (1) that

⁷¹ See Delaware Court in *National Bulk*, p. 592, and notes 27, 29 and 30; also Third Circuit, p. 410. In fact, the Delaware Court drew the following conclusion (pp. 592-3):

"The logical conclusion to be drawn from both the House and Senate reports is that at all times, the Congress had only one idea in mind—to treat the Section 9 applicants as if they purchased on the date the Act was passed."

This in the clear face of the fact that Section 9 in both original H. R. 3603 and Senate amendment to 3603 provided for the fiction that for purposes of an adjustment in the price of a vessel sold prior to the Act, the Act will be considered to have been in effect *at the time of the sale*. See Appendix B, *infra*, B-57 and B-90. In fact, in H. Rept. 831 the Committee explained Section 9 as follows (at p. 12): "The effect of making the adjustment is the same as if the bill had been enacted at the beginning of the war period and all sales during the war period had been at the statutory sales price." This shows the fallacy and danger of improper use of legislative materials.

Under similar circumstances, the Court of Appeals for the Second Circuit had the following to say in *U. S. v. Lincoln Rochester Trust Co.*, 297 F. 2d 891, 892-3 (1962) *cert. denied*, 369 U. S. 887 (1962): "... The District Court relied on House Report No. 1027, 85th Cong., 1st Sess., 1957, which accompanied H. R. 8881, passed by the House which contained a specific provision that although the surviving spouse must have the authority to give the property away it need not include the power to dispose of the property by will. H. R. 8881, however, never became law as written and passed by the House. H. R. 8381 which became Section 92(a) of the Technical Amendments Act of 1958; made no mention of the issue. The language referred to in this report relied on by the District Court was not included in the Act as it finally was adopted. No reliance can therefore be placed on this portion of the Report in interpreting the Act."

application of Section 9 will not, and was not intended to, reduce the adjusted price to the statutory sales price, (2) that the sponsors of amended Section 9 (as adopted) had only the immediate cash effect on the Government in mind and that there was no Congressional "intent" as to the effect of the Section 9 price adjustment on the tax basis of such a vessel, and (3) that the sponsors could not have intended, as the lower courts held, to put pre-Act and post-war purchases on an *equal* basis for all purposes, including tax cost, since this is impossible; but that the most Congress hoped for was to place them on a *comparable* basis as to cash effect and to be *fair*. The lower courts arrived at the opposite conclusion as to each of these points and, in doing so, grievously erred.

An analysis and study of the comparable provisions of Section 9 in the final bills considered, rejected, amended and adopted by the two Houses of Congress may be helpful in resolving the issue at hand.⁷² First, with minor exceptions, Section 9 of H. R. 3603, as originally proposed by the House Committee, and Section 9 of the Senate amendment of H. R. 3603 (like S. 292) were very similar. It was only upon the amendment of Section 9 of H. R. 3603 on the floor of the House which amended Section 9 was included in the bill as passed by the House and as adopted subsequently by both Houses, that that section differed materially as to provisions and effect from Section 9 of both original 3603 and Senate amendment of 3603. Since the provisions and plan of original 3603 and Senate amendment of 3603 are

⁷² A comparison of the provisions of Section 9 of original 3603 (as recommended by the House Committee), of H. R. 3603 (as passed by the House), of the Senate amendment to 3603 (as recommended by the Senate Committee and passed by the Senate), and of P. L. 321 (the Act as enacted) is attached as Appendix C, *infra*.

materially similar, the comparison will then be between 3603, as amended and adopted in the House (referred to for convenience as the "House bill"), and Senate amendment of 3603 (referred to for convenience as the "Senate amendment") (with comments as to changes from both in the Act as enacted).

Section 9 of the House bill contained four subsections, whereas there were six subsections under Section 9 of the Senate amendment. Subsection (a) of both are the same, and subsection (d) of the House bill is quite similar to subsection (f) of the Senate amendment. Therefore, these will be ignored in this discussion. Subsection (b) of the House bill and subsection (c) of the Senate amendment shall be referred to as the "adjustment sections" since they provided for the price adjustment. Subsection (c) of the House bill and subsection (d) of the Senate amendment shall be referred to as the "conditions sections" since they imposed condition upon the acceptance of the price adjustment. The House bill had no counterparts to subsections (b) and (e) of the Senate amendment.

The "adjustment section" of the Senate amendment provided that the "amount of the adjustment under this section shall be the excess of" followed by only two paragraphs, the first of which simply sets out the original purchase price of the vessel, depreciated or amortized to the date of enactment of the Act, and the second of which sets out the statutory sales price of the vessels, as of the date of enactment of the Act, with certain adjustments. The difference between the two paragraphs is such excess and is the amount of the adjustment. However, the "adjustment section" of the House bill contained eight paragraphs, each of which entered into, and was a material part of, the determination of the "amount of such adjustment." It

was in this version that for the first time the price adjustment to be secured by an owner did not reduce the purchase price to an amount equal to the statutory sales price.

In the "conditions section" of the Senate amendment, there are four paragraphs as compared to three paragraphs in the "conditions section" of the House bill. The major points of difference are four. First, the House bill contained no provision similar to paragraph (4) of the Senate amendment (but this is not important in the issue at hand). Second, paragraph (1) of the Senate amendment provided for a *refund* to the Government of charter hire paid by it in excess of 15% of adjusted price.⁷³ Third, all limitation for use or loss of a vessel was based on "adjusted purchase price" in the Senate amendment and on "statutory sales price" in the House bill. Last, paragraph (1) of the House bill provided for the tax effect of certain (but not all) adjustments to be made in the "adjustment section."⁷⁴

Under the Senate amendment, there were two computations, one in the "adjustment section," which was an adjustment in the purchase price (consisting of (1) a reduction in the balance of the mortgage indebtedness, if any, and the application thereagainst, if there were such a mortgage indebtedness, of any cash refund due to the applicant, or (2) a cash refund if there were no mortgage indebtedness or if any cash remained after satisfaction of the mortgage indebtedness), and the other in the "conditions section," which was a computation of the excess charter hire to be

⁷³ In the House bill the computation of excess charter hire was provided for in the "adjustment section," rather than in the "conditions section" as in the Senate amendment.

⁷⁴ In the Senate amendment *all* tax provisions were contained in a completely separate subsection of Section 9 (subsection (e)).

refunded by the owner to the Government, less certain credits thereagainst at the option of the owner.

Under the House bill, all computations were included in the "adjustment section," except the recomputation of the taxes of the applicant for the tax years between the year of acquisition of the vessel whose price is being adjusted and the year of the enactment of the bill. After this computation was made, however, it became *one* of the components under the "adjustment section" of the House bill, along with the credit for excess payments made on the purchase price, the adjustment in the mortgage indebtedness, the charter hire credits between applicant and the Government, and the interest credit to the applicant, *all* of which, when netted together, gave *the* adjustment in price and all of which affected, and were a part of the determination of, the basis of the vessel.

Taxes were handled in an entirely separate subsection of the Senate amendment, as to both computation and effect. In the House bill, the computation of taxes was covered in paragraph (1) of the "conditions section," and the effect of such tax computation was covered in paragraph (8) of the "adjustment section." This made clear that, although the tax computation was a condition, its effect was a part of the adjustment in price. Because the House bill treated the sale of any vessel prior to the date of the enactment of the Act as taking place on the latter date, the tax adjustment provisions of the House bill related only to certain events and to the period occurring between the date of original purchase and the date of enactment of the Act; whereas, since the Senate amendment was written on the theory that the Act was in effect at the time of the original purchase and that the original purchase was made under

its terms, the tax provisions of the Senate amendment provided for the redetermination of taxes in *all* tax years from and after delivery of the vessel to the purchaser, and specifically provided that, for the purposes of redetermination of income and excess profit taxes, the vessel "shall be considered as having been acquired at the adjusted purchase price." Thus, the Senate amendment specifically provided for the tax basis of a vessel whose original purchase price was adjusted under the Act; whereas, the House bill, although providing for certain recomputations in taxes, which then became an item in the adjustment of price, did not specifically provide for the new tax basis of a vessel whose price was adjusted.⁷⁵

Congress, in considering and adopting the Act, was free to adopt an act in the form of the Senate amendment or one in the form of the House bill. The applicant would have been bound by the form of such bill either in applying for an adjustment in price or, thereafter, in determining the effect of such adjustment. That the tax effect to an applicant would be different under the two forms of bills does not alter the situation. The fact that Congress selected and adopted one bill should preclude the tax officials from determining the tax basis of the vessels in

⁷⁵ Also, in the Senate amendment, a specific provision was made as to the disposition of the refunds resulting from such redetermination. Paragraph (2) of Section 9(e) of the Senate amendment gave the applicant the option to apply any refund against the remaining mortgage indebtedness in lieu of being credited or refunded to the applicant. However, in the House bill, the overpayment or deficiencies in taxes resulting from the computations in the tax provision of the House bill became one of the credits or factors in the formula used for determining the adjustment in price. See Appendix C, *infra*, C:9.

question in accordance with the other bill considered but rejected by Congress.⁷⁶

Considering H. R. 3603, as originally proposed, the amendment of Section 9 of H. R. 3603 on the floor of the House, of the Senate amendment for H. R. 3603, and the Act as finally adopted (with the changes made by the Conference Committee in the two bills as adopted separately by the two Houses), it can easily be seen that Section 9 of the Act was radically different from that section in the bills as originally proposed and considered by the Committees of each House and on which the reports of each house were based. No longer was Section 9(b) to apply as if the Act had been in force at the time of the original purchase of the vessel; no longer were the transactions that occurred between the purchase of the vessels and the time of the enactment of the Act (such as charter hire paid, interest paid on original mortgage indebtedness, taxes computed on the basis of such charter hire and of depreciation based on the original purchase price) to be unwound; rather, the vessel was to be treated as having been purchased at the time of the enactment of the Act and the original purchase price of the vessel was to be adjusted in accordance with a formula which took into consideration not only the adjusted statutory sales price, in relation to the original purchase price, but other factors which were measured by events occurring between the original purchase and the enactment of the Act (as part of the formula however, by which the adjustment was determined and not by a separate provision as a condition for making an adjustment).

⁷⁶ What was said of the taxpayer in *Curtis v. Commissioner*, 89 F. 2d 736, 738 (8th Cir., 1937) can be applied here to the Government: "... In this situation we must consider and follow what he did and not what he might have done. ..."

What is the difference to the Government and to Petitioner in the results under the Senate amendment and under the House bill, with respect to (a) the tax basis of a vessel whose purchase price is adjusted, and (b) the cash effect of the adjustment on the Government? With respect to the tax basis of a vessel, there is no doubt that under the Senate amendment, by reason of a specific provision, it would have been the adjusted purchase price; whereas, under the House bill, lacking such a specific provision, the tax basis of the vessel would be determined under the normal Code rules. With regard to the cash effect of the adjustment on the Government, such cash effect would be materially less under the House bill than under the Senate amendment. This is most important because the cash effect, not the tax effect or the tax basis, is the sole intent and purpose of the amendments to the House bill offered on the floor of the House. The sole specific "intent" of the Congress with regard to the price adjustment was to the cash effect on the Government not to the tax effect or cost basis to the applicant.

This is emphasized by the different methods of handling the adjustments between the Senate amendment and the House bill. Had the cash effect of the adjustments under the Senate amendment been the same as under the House bill, the resulting tax effect or basis would have nevertheless been different because the cash effect under the Senate amendment did not determine the tax basis (the latter being otherwise specifically provided for); whereas, under the House bill, such cash effect being a part of the adjustment in price, any reduction in such adjustment in the House bill would result not only in a reduction in the cash effect,

but also in a reduction in the adjustment in price and, therefore, a higher tax basis.⁷⁷

This logically explains the following remarks of Congressman Jackson in the debate on the floor of the House on the proposed amendments to H. R. 3603, and particularly of Section 9:⁷⁸

"There has been a feeling that the amount of the adjustment provided for in section 9 of the bill as reported is too high. The committee amendment seeks to cut down the amount of this adjustment and at the same time to be perfectly fair to all concerned—those who bought before the enactment of the bill, those who bought after the enactment of the bill, and the United States.

.

⁷⁷ The adjustment measured by charter hire paid by the Government on a vessel whose price is adjusted is a prime example of this difference. In the House bill, the applicant "shall credit the Commission with *all* amounts paid by the United States to him as charter hire for the use of the vessel." (Paragraph (6), Section 9(b)). However, under the Senate amendment the applicant would be required to *refund* to the United States any charter hire paid by the Government in excess of 15% per year of the adjusted price. (Under the House bill, there would be offset against the total charter hire to be credited to the Government the amount of charter hire that would have been paid by the Government to the applicant on any vessel traded in on the purchase of the vessel whose price is being adjusted, Paragraph (6), Section 9(b). There was, of course, no corresponding credit to the applicant under the Senate amendment, inasmuch as the Senate amendment still treated the sale—and therefore the trade-in—as having taken place on the date of delivery of the vessel.) The net effect, as to Petitioner, of the differences in treatment of charter hire, can be seen in computation XIII, Appendix E, *infra*, E-4. The cash difference or effect on this one item alone is \$3,380,328.30 (When this is applied to all applicants for adjustment and to all vessels subject to such adjustment, it can be easily seen that there was a substantial cash effect (in the form of savings) on the Government in the approach of the House bill as contrasted with that of the Senate amendment.)

⁷⁸ 91 Cong. Rec. 9436-7 (Part 7) (October 2, 1945).

"... The amendment reduces the amount of the adjustment under section 9 substantially and is fair to all concerned.

"I might say incidentally that the adjustments under the bill as originally reported out amounted to \$89,000,000.00. That included a scaling down of mortgage indebtedness owing to the Maritime Commission and a small amount of cash. This amendment reduces that adjustment to the owners down to \$68,000,000.00 or a total saving of \$21,000,000.00." (emphasis added).

All concerned with the bills recognized that legally and morally the Government had to make some adjustment for prior purchases. However, the fears of the cost of such adjustments to the Government and the questions raised by differences in the views of and the effects on foreign and domestic owners, tankers and dry-cargo vessel owners and subsidized and non-subsidized owners permeated the hearings and the debates on the bills. Although the prime object was a healthy merchant marine and the need for a stable price policy for disposition of Government owned vessels to private operators, underlying all discussions on statutory sales price and adjustments in previous purchases was the net return or cost to the Treasury. This was the primary concern of the Congress and fashioned its "intent" with regard to Section 9, an intent, therefore, directed to the cash immediate effect on the Government and not to tax effect or cost basis on vessels whose prices might be adjusted.⁷⁰

⁷⁰ Nowhere in the Committee reports or in the debates is any reference made specifically to the question at hand, the tax cost or basis of a vessel whose original purchase price is adjusted. In

The bills, as adopted in the House and in the Senate, went to a Conference Committee, which reported out a substitute for both bills.⁸⁰ Just as in the debates, occurring in explanation of the amendment to Section 9 on the floor of the House, the statement of the House managers attempts to simplify the explanation of the provisions of the bill and the recommendations of the Conference Committee.⁸¹ Such explanations must then be read carefully in the light of the differences between the House bill, the Senate amendment and the Conference Committee substitute (subsequently adopted by the Congress). The managers attempted in non-technical language and as briefly as possible to set out the differences between the House bill and the Senate amendment as to Section 9 and concluded by saying (at p. 17) that the "conference agreement restores the House provisions on the points stated in the two preceding paragraphs."

It is interesting to note that, whereas in the House bill paragraph (2) of Section 9(b) had cancelled the mortgage indebtedness and provided for a new mortgage indebtedness, paragraph (2) of Section 9(b) of the Conference

Federal Trade Commission v. Sun Oil Co., 371 U. S. 505, 517, 83 Sup. Ct. 358, 9 L. Ed. 2d 466 (1963), this Court stated: "While such language in the congressional materials suggests the reading limiting Sec. 2(b) to the meeting of the seller's own competition, it is, of course, not conclusive since not directed to the specific problem here presented. Neither the briefs nor the arguments of the parties nor of the amici have pointed to any more explicit congressional guide to resolution of the precise question before us. No more can be said than that there appears to be nothing in the legislative history to directly contradict what we deem to be the ordinary meaning of the statutory language or to indicate that a different reading was specifically intended; what few guides there are support the interpretation we here adopt."

⁸⁰ See Conf. Rep. No. 1526, 79th Cong., 2d Sess. (1946).

⁸¹ *Op. cit. supra*, note 80, pp. 17-18.

bill provided only that applicant's mortgage indebtedness "shall be adjusted" and paragraph (3) Section 9(f) of the Conference bill referred to "the adjusted mortgage indebtedness" rather than to "the new mortgage indebtedness" as in the House bill. This change negated any possible idea of the rescission of the old purchase agreement, and further specifically provided that such adjusted mortgage indebtedness shall be payable in equal annual installments thereafter during "the remaining life of such mortgage," a new provision. This language indicates clearly that it was not the intent of Congress to rescind the original transaction and to substitute a new one as of the date of enactment of the Act, as contended by the Government.⁸²

Two other actions of the Conference Committee in recommending language used in the House bill over that in

⁸² The Third Circuit held (p. 412) that "... the foregoing legislative materials and statutory scheme clearly manifest a Congressional intention to effect a rescission of a prior contract of sale, and an adjustment in price to the statutory sales price." Considering the legislative history of the Act, the regulations and the various agreements between the parties it can hardly be said that the previous contracts and mortgages had been annulled, abrogated, cancelled or rescinded. If the Act had provided that the original purchase contracts and all documents in connection therewith were to be annulled, cancelled and rescinded, and new contracts entered into, in which the purchase price of each vessel would be the adjusted statutory sales price, then there would be no doubt that there would be a rescission rather than an adjustment. The mere fact that the Act provided that such adjustment shall be made ... by treating the vessel as if it were being sold to the Applicant on the date of the enactment of this Act ... does not mean that for all purposes (such as existing mortgages or existing charters), all previous contracts and relationships were to be rescinded or annulled. No new notes, mortgages or charters were made by Petitioner to replace those in effect on March 8, 1946. The effect of the difference between rescission and adjustment is illustrated by the case of *The Borrin Corporation v. Commissioner*, 39 B. T. A. 712 (1939), aff'd 117 F. 2d 917 (6th Cir., 1941), cert. denied 314 U. S. 638 (1941).

the Senate amendment may throw some additional light on the issue here. In the Senate amendment, under the "conditions section," the applicant must agree that the liability of the United States under any charter party for use and loss of the vessel shall be determined on the basis of "the adjusted purchase price" (with certain further adjustments). The corresponding provisions in the "conditions section" of the House bill provided for the same limitation of liability (except for additional depreciation for war service) but based on "statutory sales price."⁸³

The Conference bill restored the House version on these points.⁸⁴ Thus, the bill, as adopted, used the term "statutory sales price" instead of the term "adjusted purchase price." The only explanation for the adoption of the language in the House bill is the fact that under the House bill the adjusted purchase price of a vessel would be different from the statutory sales price.⁸⁵ This is a clear recognition of the difference in the approach and effect of the

⁸³ See comparison in Appendix C, *infra*, C-7 and C-8.

⁸⁴ Omitting the additional 3 per centum per annum war service depreciation, however.

⁸⁵ Although the term "adjusted purchase price" is not defined in the Senate amendment, it is used only in subsections (d) and (e) after the "adjustment section" and therefore logically refers to the adjusted purchase price specified in subsection (e). It is clear that under the Senate amendment the adjusted purchase price would be the statutory sales price. However, that would not necessarily mean that this price would be the tax basis for such vessel and so the Senate amendment specifically provided in subsection (e) ("tax section") that it would be. If the adjustments under the "adjustment section" of the House bill resulted in an "adjusted purchase price" equal to the "statutory sales price," then there would have been no need to use the House bill language in lieu of the Senate amendment language. See, however, the opposite conclusion reached by the Delaware Court in *National Bulk*, pp. 585, 591: "If the new price is not the statutory sales price, this provision is without meaning."

two bills. The effect of the adjustment in the Senate amendment would be to make the adjusted purchase price the same as the adjusted statutory sales price. However, since none of the adjustments in the House bill were treated separately as mere conditions of obtaining the adjustment but were made a part or a measure of the adjustment itself, the presence of cash credits or adjustments in that section of the House bill, other than the credit pertaining to the cash payments in excess of 25% of the statutory sales price (contained in both the House bill and the Senate amendment), would cause the adjusted purchase price to differ from the adjusted statutory sales price. This is the point contended for by Petitioner and is supported by the action and recommendation of the Conference Committee and of the two Houses in adopting the Conference bill.

Also, as previously pointed out, Section 9(e)(1) of the Senate amendment specifically fixed the tax basis of a vessel, whose original purchase price was adjusted, at the "adjusted purchase price." No comment is made in the Conference Report as to why this provision was omitted in the final bill. However, it does not appear in the Act, as adopted, and there is no similar specific provision anywhere in the Act. There can be only one inference from this omission. Either the matter was overlooked by the Congress in the consideration of the differing bills and in the recommendation of the Conference Committee as to the bill to be enacted, or the Congress intentionally left the tax basis of such vessels to be determined under the usual rules of the Internal Revenue Code then in effect, after giving effect to the adjustment in price under Section 9(b) of the Act.⁸⁶ Since the Senate considered this matter and made a

⁸⁶ See *Western Union v. Lenroot*, 323 U. S. 490, 500-1, 65 Sup. Ct. 335, 89 L. Ed. 414 (1944).

recommendation on the point, which was before the Conference Committee, it could hardly be said to have been overlooked. As pointed out very ably by Circuit Judge Cameron, dissenting in the Fifth Circuit (at p. 134):

“When Congress intended that its acts authorizing the redetermination of the price of ships purchased under our various subsidized ship procurement programs would also determine the basis of property in a manner differing from Section 113(a), *supra*, or would determine other factors affecting income tax liability of purchasers, it has always said so specifically.” (citing examples in the footnotes thereto).⁸⁷

The lower courts made as a major premise for their conclusions a Congressional intent to put pre-Act and postwar purchasers on an *equal* basis.⁸⁸ The myriad factors involved in attempting to equalize such purchasers mitigate against any such intent. In addition the impossibility of achieving any such result confirms no such intent would have been either reasonable or likely. Finally, the resulting legislation falls so far short of even attempting to achieve full equality that this major premise seems demonstrably erroneous by reference to the statutory provisions about which there is no controversy.

⁸⁷ See also the lengthy comment on this point by Judge Madden in the *Socony* case, at p. 913.

⁸⁸ Fifth Circuit (at pp. 132-3). “... It was clearly the intention of Congress to put pre-enactment purchasers and post-enactment purchasers on the same basis, that of the statutory sales price. The Delaware Court (at p. 591): ‘After studying the legislative history of Section 9, one inescapable conclusion concerning legislative intent appears. Congress meant to put pre-Act and postwar purchasers on exactly the same basis—their shoes were to be interchangeable. Using this fact as a major premise, it becomes clear that all buyers were to pay one price, the statutory sales price ...’

In fact, fairness, not equality, was the most that could be hoped for. This was a most complex and difficult piece of legislation and Section 9 posed problems in addition to those faced in the other sections of the Act. The views of the shipping industry were quite divergent as were those of the members of Congress who worked on the legislation. The results were a compromise of interests and views.⁸⁹

Section 9 was included in the Act because all recognized that purchasers of vessels prior to the Act would suffer

⁸⁹ "Section 9 of H. R. 3603 provides for a refund to operators who purchased vessels during the war at war cost, . . . Such an adjustment is *fair* . . . However, Section 9 contains many loopholes, which in my opinion places the wartime purchaser in a far better position than future purchasers . . . If there is to be *equality* between past and future purchasers there must be *comparable* terms and nothing less . . ." (91 Cong. Rec. 9182, Part 7, Congressman Jackson)

" . . . Whether the provisions of the bill are the best possible in this respect, nobody can say, but I feel perfectly confident in saying that no one is likely hastily to improvise anything better." (91 Cong. Rec. 9197, Part 7, Congressman Jackson)

"There has been a feeling that the amount of the adjustment provided for in Section 9 of the bill as reported is too high. The Committee amendment seeks to cut down the amount of this adjustment and at the same to be perfectly *fair* to all concerned—those who bought before enactment of the bill, those who bought after the enactment of the bill, and the United States.

" . . . The amendment reduces the amount of the adjustment under Section 9 substantially and is *fair* to all concerned." (91 Cong. Rec. 9282, Part 7, Congressman Jackson)

" . . . Provisions to allow such adjustment were included in the bill. They have been the subject of considerable controversy as to proper implementation of the admitted desirability of proper adjustments to place prior purchasers and postwar purchasers of similar vessels on a *comparable* basis . . . Again, the Committee has resolved these discussions in a manner which it believes to be *fair* to the Government and to the parties concerned. The amount involved under different plans has been subordinated in the minds of the Committee to the desirability of arriving at *fair* adjustments, but at the same time the Committee has not found it practicable to provide adjustments which would satisfy to the fullest extent the natural desires of every private purchaser the most favorable treatment in the light of his particular situation." (S. Rep. No. 807, *supra*, note 67, p. 6)

"an unwarranted discrimination unless the price at which they purchased or agreed to purchase these vessels is adjusted to conform to the statutory sales price prescribed in the bill."⁹⁰ The problem was how to do this and at the same time "to put everybody on the same basis as of the date of the enactment of the legislation."⁹¹ The lower courts evidently felt that Public Law 321 achieved this purpose (according to the Government's and their interpretation) but only if the statutory sales price should be the tax basis for a vessel purchased prior to the Act and whose original purchase price was adjusted under the Act. No criticism is intended of Congress in noting that there were many ways other than price in which those purchasing prior to the Act suffered economic disadvantages in comparison with those purchasing under the Act. It simply indicates that there was no way to completely equalize such purchasers or to put them in *exactly* the same position. The following discussion simply points out a few of the more important elements not taken into consideration in the Act.

An applicant was given no credit or allowance (1) for State income taxes paid by applicant on the charter hire received prior to the enactment of the Act and credited to the Commission under paragraph (6) of Section 9(b),⁹² (2) for depreciation on any vessel traded in and of which, under the fiction of Section 9, he was treated as the owner until the date of enactment, and (3) for any interest

⁹⁰ H. Rep. 831, *supra*, note 62; p. 12.

⁹¹ Words of Congressman Bradley, 91 Cong. Rec. 9438, Part 7.

⁹² In the State of Alabama alone, a corporation income tax of 3% was imposed on Petitioner in the years in question. Title 51, Section 398, Code of Alabama (1940).

on overpayment of taxes credited to applicant under paragraph (8) as computed under Section 9(c)(1) of the Act, as is the usual case in the refund of taxes.

An applicant was given no allowance or credit for normal overhead or fixed cost, which resulted or accrued by reason of Petitioner's having been the actual owner of the vessel during the period between purchase and date of the Act.⁹³

The liability of the United States for use or loss of any vessel under charter to it, whose original purchase price was adjusted under Section 9(b) of the Act, would be limited to 15% per year of the statutory sales price of such vessel for use, and to statutory sales price less depreciation to date of loss for loss. However, as to any vessel purchased after enactment of the Act, the owner thereof would not be limited as to either the amount of charter hire due for use or to the amount of compensation due for loss of such vessel.⁹⁴

⁹³ Evidently, this was on the assumption that the entire charter hire paid by the Government to the applicant was clear profit and the return or credit of the same to the Government did not result in applicant's absorbing any cost attributable to the ownership of the vessels during that period prior to the Act. However, during the period in question, these vessels were subject to the property taxes assessed and levied by the State of Alabama, the domicile or home port of these vessels having been in Mobile, Alabama. (R. 149) Title 51, Section 21, Code of Alabama (1940). However, if the Senate amendment had been enacted, applicant would have at least received charter hire on 16 vessels at the rate of 15% per annum on the statutory sales price, thereby covering that and similar such costs.

⁹⁴ In the 83rd Congress, 1st Session, H. R. 7065 and S. 1918 were introduced to amend Section 9(c)(2) and (3) of the Act so as to correct this inequity. Hearings were held before the Committee on Merchant Marine and Fisheries of the House and before the Committee on Interstate and Foreign Commerce of the Senate. The Senate Bill was approved by the Senate on May 4, 1954 but no action was taken in the House. In the next Congress, H. R. 8352 and S. 3113 were introduced, this time to amend Section 9(c)(2) of the Act only, with the provision, however, that it would not be

Petitioner was required to pay the adjusted mortgage indebtedness over the remaining life of the original mortgages (16 years and 4 months as to the *Fairisle* and 20 years as to the John B. Waterman (R. 163)).⁹⁵ However, anyone purchasing under the Act and after its enactment would have been entitled to pay the balance due on the purchase price, after payment of 25% of the statutory sales price, over a 20-year period, thereby giving such purchaser a longer period of pay-out with lower annual payments and at the low interest rate of $3\frac{1}{2}\%$.⁹⁶

retroactive in application but would apply only to any charter party executed on and after a specific date. This bill became law on August 6, 1956 (c. 1013, 70 Stat. 1068, 50 U. S. C. App. Section 1742 (c) (2)).

⁹⁵ Actually because payments were continued to be made in the amounts called for by the original mortgages, which were in excess of the payments on the adjusted mortgage indebtedness, which excess under the Interim Agreement, Article XVI, could be applied against such unpaid mortgage instalments as designated by Petitioner, certain mortgages by such application were paid in full prior to the date of the Final Agreement among which was the *Fairisle*. (R. 163) However, even as to the *Warrior*, the payments were spread over a period of 17 years and 4 months, rather than the full 20 years.

⁹⁶ Under the House bill, which cancelled the old mortgage indebtedness, the pay-out period of a pre-enactment purchaser would have been the same as a post-enactment purchaser. However, this was amended in conference. Although in the Final Agreement, by reason of the desire of Petitioner to fully apply all available Section 112(f) funds on the purchase prices of the applicable vessels and thereby avoid a tax on such funds, the net cash credit to Petitioner was, in effect, paid to Petitioner by means of reduction in its mortgage indebtedness, this would not have been the case under the Interim Agreement nor would it have been allowed as a result of the Independent Offices Appropriation Act, 1948, 61 Stat. 585, 604, *supra*. Even though, by applying this amount against the remaining adjusted mortgage indebtedness, Petitioner saved interest at the rate of 3% on such mortgages to the extent of such application, Petitioner, doubtless, could have earned a higher return than $3\frac{1}{2}\%$ on such cash credits. One purchasing after the date of the Act would not have been required to make this additional cash payment.

The income of an applicant was increased disproportionately in the taxable year in which March 8, 1946 fell by reason of treating all of the interest and all of the charter hire credited to the applicant under paragraphs (5) and (6) as having been received in that year under the provisions of Section 9(c)(1) of the Act, instead of accruing such credits ratably over the years in which actually accrued, which was the manner of treatment as to the interest in the House bill, but which was changed in conference.⁹⁷

A very major difference and disadvantage would be the fact that any pre-enactment purchaser who benefited from the ownership of a vessel during that period by either chartering the vessel to someone other than the Government or who used the vessel to carry his own commodities⁹⁸ did not have to account for such earnings by giving a credit to the Commission for such earnings as in the case of a similar purchaser whose sole return from the vessel was the charter hire paid by the Government. These earnings could be used to apply against the purchase price of the vessel without affecting the tax cost or basis of such vessel. However, according to the Government's contention, the credit to the Commission for charter hire paid by the Government will not be treated as a part of the price adjustment and, therefore, of the cost of the vessel.

Thus, by no stretch of the imagination can one say that a pre-Act purchaser, whose original purchase price of a vessel purchased prior to the Act was adjusted thereunder,

⁹⁷ See Conf. Rep. No. 1526, *supra*, note 69, p. 17.

⁹⁸ See *Socony Mobil Oil Co. v. United States*, 279 F. 2d 512, 515 (Ct. Cls., 1960) where, of the 12 vessels purchased prior to the Act and whose prices were readjusted under the Act and which were chartered to the Government, 8 were released from the charter in November, 1945, some 5 months prior to the date of enactment of the Act, during which period they were available for charter or for use by Socony Mobil Oil Co.

and a postwar purchaser stood in the same shoes. Thus, if these two purchasers did not occupy the same position with respect to the above situations, then there is no reason to infer that they should be in the same position with regard to the tax basis of their respective vessels. In the circumstances, only a specific and clear provision to that effect in the statute would have accomplished such a result. Rather than saying, as did the Delaware Court (p. 593), that a "decision for the taxpayer would be contrary to the equitable principles that motivated the Congress to act," it can be said that a decision for the taxpayer here would not only be in accord with the wording of the statute, the intent of Congress and the established principles of the Code but would help overcome some of the inequities accruing to the pre-Act purchasers under the Act.

(c) Having looked to the legislative history of the Act, the lower courts erred in failing to consider the legislative history subsequent to the Act.

The lower court recognized that subsequent expression of opinion by a legislative body as to the meaning of a statute may be an important aid in interpreting that statute.⁹⁹ However, both the Delaware Court and the Third Circuit held that the rule announced in *Fogarty v. United States*, 340 U. S. 8, 71 Sup. Ct. 5, 95 L. Ed. 10 (1950) precluded such subsequent legislative history from consideration.¹⁰⁰ However, it is respectfully contended that, under the circumstances, *Fogarty* does not apply and that the subsequent legislative history is admissible under the holding of *Sioux Tribe of Indians v. United States*, 316 U. S. 317,

⁹⁹ Delaware Court, p. 593, note 36.

¹⁰⁰ The majority in the Fifth Circuit made no mention of this evidence or rule in its brief opinion. However, Circuit Judge Cameron in his dissent (at p. 135) differed on this point.

62 Sup. Ct. 1095, 86 L. Ed. 1501 (1942), in which this Court said (pp. 329-330):

“This statement by the Committee which reported the General Allotment Act of 1887, made within five years of its passage, is virtually conclusive as to the significance of that Act . . .”

It must be recalled that this excursion into the legislative history of the Act, and particularly Section 9(b), is taken supposedly because the statutory language is either not definite or perhaps ambiguous with regard to the issue in point here. As an aid in the statutory interpretation or construction of this section, extrinsic matters are being considered. *Sioux Tribe* applies only to allow the subsequent legislative history, here Committee reports and debate on an amendment of the very statute whose construction is in issue (which amendment was adopted) to be considered in determining the intent of the Congress at the time the original Act was enacted. *Fogarty* held only that, if there is a way of ascertaining the intent of the Congress contemporaneous with the enactment of the legislation in question, subsequent events need not be studied. Petitioner maintains that either (1) the statutory language of Section 9 is clear and unambiguous in that it contains no provision specifying the tax basis of a vessel whose price is adjusted and, therefore, such basis must be determined under the normal rules of the Code, or (2) the legislative history, including prior bills, Committee Reports, debates on the floor of the Congress, bills considered and not enacted, and proposed amendments to bills relative to Section 9, clearly indicates no intent that the statutory sales price be the tax basis, or, if Petitioner not be correct in these, (3) that the legislative history prior to the enactment of the Act indicates no contemporaneous intent of Congress as to the

tax basis of a vessel whose price was adjusted under Section 9, and, therefore, resort may be had to subsequent legislative history, which does not supplant, but rather supplies, the contemporaneous intent of the 79th Congress which enacted the Act. Therefore, *Fogarty* does not apply and *Sioux Tribe* does.¹⁰¹

- (d) Subsequent legislative history clearly demonstrates the error of the lower courts and of the Government with regard to Congressional intent that the statutory sales price be the tax basis of a vessel whose original purchase price is adjusted pursuant to Section 9.

In 1949, the Treasury Department, through the office of the Commissioner of Internal Revenue, issued Mimeograph 6366, dated February 18, 1949,¹⁰² in which that Department stated, in Paragraph 8 thereof, that:

“For Federal tax purposes, on and after March 8, 1946, the basis (unadjusted) under Section 113(a) of the Internal Revenue Code, of a vessel on which an adjustment under Section 9 of the Act has been made is the statutory sales price as determined by the Commission under the Act.”

In the Congress in session when Mimeograph 6366 was issued, a bill, H. R. 3419, was introduced, to amend the Merchant Ship Sales Act of 1946 by adding the following paragraph at the end of Section 9(b):

“From and after March 8, 1946, the cost basis of a vessel in respect of which the price adjustment is

¹⁰¹ The Delaware Court appears to base its holding on this point on the fact that *Fogarty* came after *Sioux Tribe*. See note 36 at p. 593. However, *Sioux Tribe* was cited in the decision of *Federal Housing Authority v. The Darlington*, *supra*, p. 28, which was decided after *Fogarty*.

¹⁰² 1949-1 Cum. Bull. 270.

made shall be the undepreciated original purchase price reduced by the net amount of such adjustment in favor of the applicant resulting from the application of all the foregoing provisions of this subsection."

This bill was considered by the Committee on Merchant Marine and Fisheries of the House (the Committee with the same jurisdiction as the one which had considered H. R. 3603) and recommended for adoption.¹⁰³ The following excerpts appear in that Committee Report:

"The purpose of this bill is to clarify section 9 of the Merchant Ship Sales Act of 1946 with regard to the proper cost basis for depreciation purposes of war-built vessels sold by the United States Maritime Commission prior to the enactment of the act." (p. 1)

"Your committee has been informed through hearings held recently that in most, if not all cases, the operation of the *adjustment provisions* of section 9 *never actually results in a net cost to the purchaser as low as the statutory sales price* which he would have had to pay if he had purchased the vessel after the enactment of the act. Notwithstanding this fact, however, the Bureau of Internal Revenue holds that for determining the cost basis for purposes of depreciation the 'statutory sales price' shall be taken as a criterion, not *the actual net cost to the purchaser*. The effect of this, of course, is that the prior purchaser whose price was adjusted under section 9, is allowed lower depreciation charges than he would normally be able to claim on the basis of the *actual net amount paid for the vessel . . .*" (p. 2) (emphasis added)

Then, under the heading "Recommendation" (p. 2) the Committee Report states:

¹⁰³ See H. Rep. No. 1342, 81st Cong., 1st Sess., dated September 27, 1949, to accompany H. R. 3419.

"Since the provisions of section 9 appear to be ambiguous and as interpreted by the Bureau of Internal Revenue result in inequities to those citizens who purchased war-built vessels prior to the enactment of the Act (*a result which was not intended when the act was originally passed*), your committee believes this amendment should be enacted." (emphasis added).

H. R. 3419 was passed by the House on October 3, 1949 and in the Senate was referred to the Committee on Interstate and Foreign Commerce (the committee with jurisdiction similar to the one which had considered H. R. 3603 and S. 292), which Committee also reported the bill with a favorable recommendation.¹⁰⁴ The following excerpts are taken from that Committee Report:

"The purpose of this bill is to clarify a possible ambiguity in the Merchant Ship Sales Act of 1946 with regard to the proper cost basis of war-built vessels sold by the United States Maritime Commission prior to March 8, 1946, the date of enactment of that statute, and whose original purchase price has been adjusted under section 9 of the act." (p. 1).

"The Merchant Ship Sales Act of 1946 provided for the sale of war-built vessels owned by the United States and suitable for commercial use. In that act, a formula was prescribed for determining the 'statutory sales price' of various types of vessels to be sold thereunder. In fairness to those who had already purchased the same type vessels during the war years, frequently in response to the urging of the Maritime Commission, it was provided in section 9 of the act that these prior purchasers should be entitled to certain specified adjustments in the prices they originally agreed to pay for such vessels. Such

¹⁰⁴ See S. Rep. No. 1915, 81st Cong., 2d Sess., dated June 27 (Legislative Day, June 7), 1950, to accompany H. R. 3419.

action fulfilled the assurances given to many prior purchasers, usually incorporated in the original contracts of purchase, that they would be given the benefit of any price reductions contained in any subsequent ship sales legislation. . . ." (p. 1)

"Section 9 proposes to treat the vessel sold prior to March 8, 1946 as if they were being sold on that date and not before. *A formula is provided for determining the adjustment. A series of debits and credits are set forth, the net effect of which is to arrive at an adjusted price for the vessel. . . . The final result is that the adjusted purchase price is the original purchase price less the net price adjustment.* However, *these adjustments almost never result in a net cost of the prior purchaser as low as the 'statutory sales price.'* In most cases, if not all, this adjusted purchase price is considerably higher than subsequent purchasers are required to pay for identical type ships under the Ship Sales Act.

"This bill does not increase the amount of adjustments to be given to prior purchasers under the Merchant Ship Sales Act of 1946. It does not seek to change the *price-adjustment formula*. Its purpose is to clarify a possible ambiguity in the provision of this statute, and to insure to prior purchasers seeking adjustment under section 9 that *the adjusted purchase price is the proper depreciable cost basis of the vessel* as of March 8, 1946, which amount can be depreciated over the remaining life expectancy of the vessel.

"As indicated by the House Committee on Merchant Marine and Fisheries' Report on this bill (Rept. No. 1342), enactment of this legislation *would be in accord with the intent of Congress in enacting section 9 of the Ship Sales Act.* Furthermore, this conforms to established accounting practices in that the prior purchaser's depreciable cost

will be his actual cost, and not the lower statutory sales price, of which he has never received the benefit.

"As previously stated, the operation of the *formula in section 9* is such that the adjusted purchase price is higher, and often very much higher, than the statutory sales price at which similar vessels were sold to others, including foreigners, after the date of enactment of the Ships Sales Act. The Bureau of Internal Revenue has indicated that, under the present wording of the Ship Sales Act, persons who purchased vessels prior to the enactment of the Ship Sales Act and received an adjustment under section 9 of that statute should use the 'statutory sales price' as their cost basis rather than their *actual 'adjusted purchase price' under the formula provided by section 9*. . Such an interpretation has the effect of largely nullifying the intent and purpose of the adjustment provisions of that act and of depriving these prior purchasers of the adjustment benefits Congress intended" (p. 2) (emphasis added).

The proposed amendment was adopted in that form by the Senate. However, H. R. 3419 was vetoed by President Truman after Congress had adjourned. In his veto message to Congress¹⁰⁵ the President stated (p. 15792):

"In order to accord prior purchasers a parity of treatment with those buying vessels subsequent to passage of the act, section 9(b) prescribes certain procedures by which a prior purchaser voluntarily may obtain adjustments in his original price. . . . The net effect of these adjustments has usually been in favor of the government so that *the adjusted obligation of the prior purchaser has been somewhere between the price which he originally paid for the*

¹⁰⁵ 96 Cong. Rec. 15791-2, Part 11 (November 27, 1950).

vessel and the statutory sales price.” (emphasis added).

In vetoing the bill, the President expressed concern that this method of handling would not be equitable and suggested another approach in lieu thereof. However, this does not detract from the fact that both Houses of the Congress and both Committees of these two Houses which had previously considered and recommended the Act expressed their opinion and belief (in both the Committee reports and in the adoption of the proposed amendment based on these reports) that it was not the original intent of Congress that the basis of a vessel whose original purchase price had been adjusted under Section 9 was to be the statutory sales price. This expression occurred within three and one-half years (in the House) and four and one-half years (in the Senate) after the adoption of the Act. The effect of this subsequent legislative history as evidence of Congressional intent is clearly within the holding of *Sioux Tribe, supra*.

6. If Congress had intended what the lower courts and the Government erroneously say it did, it would have said so specifically as it has in other similar cases.

As pointed out by Circuit Judge Cameron dissenting in the Fifth Circuit, when Congress has desired that the basis of vessels be determined in a manner different from Section 113(a) it has always said so specifically. He pointed to Sections 510 and 511 of the Merchant Marine Act, 1936.¹⁰⁶ In S. 292 and in the Senate amendment of H. R. 3603 the Senate specifically provided for the tax consequences of the adjustment, not just between the years of original purchase and the year of the Act as in the Act, but

¹⁰⁶ See note 1 at p. 134.

for all years subsequent to original purchase.¹⁰⁷ It is dangerous to draw inferences from failures to act or omissions by Congress but there certainly is no basis for inferring here that Congress intended a result which would have inevitably followed from Section 9(e)(1) of the Senate Amendment when it, in considering that bill with the House bill, adopted a bill without a similar provision. Unfortunately, the Conference Report makes no mention of Section 9(e)(1) and why it was omitted from the Conference bill.

This was quite properly recognized and accorded its proper interpretation by the Court of Claims in the *Socony* case.

“This legislative history shows that the committees of Congress gave minute attention to the tax consequences, current and future, of the readjustment authorized by section 9. The bill as enacted by the Senate had in it an express provision that the statutory sales price should be the basis for future depreciation. The conference omitted this provision, and the Act as passed omitted it. There is no room for an implication that Congress, having considered and omitted it, showed, by other parts of section 9, an intent to retain it.” (at p. 913).¹⁰⁸

This is just another indication of the attempt by the Government to convert the effect of Section 9 of the Act into an act not only different from the one enacted but one that was considered, but rejected, by Congress.

¹⁰⁷ Section 9(e)(1) of Senate amendment of H. R. 3603. Appendix C, *infra*, C-9.

¹⁰⁸ To the same effect, see, the Alabama Court's opinion at pp. 292-30.

Conclusion.

In conclusion it is respectfully submitted that the Fifth Circuit erred (a) in overruling the Alabama Court and in holding that the tax basis, for purposes of depreciation, of the 18 vessels owned by Petitioner was not the actual economic cost of those vessels to Petitioner but rather was their artificially contrived or hypothetical statutory sales price; (b) in failing to apply the usual and normal Internal Revenue Code provisions and rules applicable in determining the tax basis of the 18 vessels of Petitioner; and (c) in its findings and conclusions, in the face of the clear mandate and language of Section 9, with regard to the Congressional intent as to Section 9(b), its application and particularly the effect thereof to the tax basis of the 18 vessels of the Petitioner. Petitioner also respectfully contends that the reasoning and conclusion of the Alabama Court and of the Court of Claims in the consolidated cases of *Socony*, were in all respects correct and proper in their interpretation of the application and effect of Section 9(b) of the Act and the resolution of the issue of the proper tax basis of such property.

For these reasons and on the basis of the arguments herein made, Petitioner respectfully requests that the decision of the Fifth Circuit be overruled and the judgment of the Alabama District Court be sustained and reinstated as to the issue for which the writ of certiorari was granted.

Respectfully submitted,

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February 19, 1965

Proof of Service.

I, John W. McConnell, Jr., the attorney of record for Petitioner herein and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 23rd day of February, 1965, I served a copy of the foregoing Brief of Petitioner with separate Appendices by personal service on each of the following attorneys of record for the United States of America in their offices in the Department of Justice, Washington, D. C.:

1. The Honorable Archibald Cox, Solicitor General
2. The Honorable John B. Jones, Acting Assistant Attorney General
3. The Honorable I. Henry Kutz and David I. Granger, Attorneys, Department of Justice.

JOHN W. McCONNELL, JR.

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In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 245

WATERMAN STEAMSHIP CORPORATION, PETITIONER

v.

UNITED STATES OF AMERICA

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE FIFTH CIRCUIT**

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The opinion of the district court (R. 170-181) is reported at 203 F. Supp. 915. The opinions of the court of appeals (R. 183-191) are reported at 330 F. 2d 128.

JURISDICTION

The judgment of the court of appeals was entered on March 30, 1964. (R. 192.) Taxpayer's petition for rehearing was denied on May 4, 1964. (R. 199.) The petition for a writ of certiorari was filed on July 2, 1964, and granted on December 7, 1964. (R. 200.) The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

QUESTION PRESENTED

What was the effect upon taxpayer's basis (for federal income tax purposes) when it applied for and received a price adjustment for eighteen vessels pursuant to Section 9 of the Merchant Ship Sales Act of 1946?

STATUTES INVOLVED

The relevant portions of the Internal Revenue Code of 1939 and of the Merchant Ship Sales Act of 1946 are set forth in the Appendix, *infra*, pp. 1a-15a.

STATEMENT

This case involves the determination of taxpayer's (petitioner's) basis, for federal income tax purposes, of eighteen vessels purchased by it from the United States during the Second World War. Upon taxpayer's application, the sales prices of the vessels were adjusted downward after the War pursuant to Section 9 of the Merchant Ship Sales Act of 1946, c. 82, 60 Stat. 41, 46-49 (50 U.S.C. App. 1742). The question is the effect of this price adjustment—and accompanying adjustments also provided by Section 9—upon basis and hence upon the depreciation deductions to which taxpayer was entitled for the years 1947 through 1950 (R. 170).

Between 1942 and 1946, taxpayer Waterman Steamship Corporation purchased the ships in question from the United States Maritime Commission ("Maritime") (R. 41).¹ It immediately chartered the vessels

¹ The United States Maritime Commission was abolished by Reorganization Plan No. 21 of 1950, 64 Stat. 1273, effective May 24, 1950. The Federal Maritime Board and its chairman, and the Maritime Administration and its administrator, succeeded to the functions of the Maritime Commission.

back to the United States under arrangements which continued until various dates in 1946.² The government paid charter hire to Waterman for the vessels, which Waterman reported as income on its federal income tax returns for 1942 through 1946. Waterman, in turn, deducted substantial depreciation and amortization for the vessels on its federal income tax returns for those years. (R. 41; Pet. Br., App. D, Ex. G, col. (d)).

On March 8, 1946, Congress enacted the Merchant Ship Sales Act of 1946. Section 4 gave citizens of the United States the right to purchase war-built vessels from the United States at statutory sales prices defined in Section 3(d). The statutory prices were a fractional part (50% in the case of cargo vessels, 87½% in the case of tankers) of the cost of similar vessels before the War (on January 1, 1941), less allowances for depreciation, wear and tear, and the special features of particular vessels. The statutory prices set by the Act were thus substantially below the prices at which similar vessels had been sold by the United States during the War.

Section 9 of the Act provided the opportunity, upon application, for those who had bought vessels between 1941 and 1946 to obtain an adjustment made "by treating the vessel as if it were being sold to the applicant on the date of the enactment of this Act

² The last two vessels purchased by Waterman, the *Fairport* and the *John B. Waterman*, were delivered on February 27, 1946, and March 11, 1946, respectively, one just before and the other just after the date of the Merchant Ship Sales Act (March 8, 1946), and thus were not chartered to the government before the Act. (R. 41, 163.)

[March 8, 1946], and not before that time." The details of the Section 9 adjustment were complex. Essentially it was composed of three parts: (1) a downward purchase price adjustment in the applicant's favor; (2) an adjustment in the government's favor offsetting the after-tax profit realized by the applicant through its ownership of the vessel before the Act; and (3) an adjustment in the applicant's favor representing other amounts which it would have earned instead (after taxes) had it not bought the vessel until the date of the Act.

Thus Section 9 first provided a credit to the applicant for the difference between the price it had actually paid for the vessel during the War and the 1946 statutory sales price of a similar vessel (Sections 9(b)(1)-(4), (7)). Secondly, Maritime was credited with the charter hire it had paid the applicant for use of the ship before the date of the Act (Section 9(b)(6)) while the applicant's federal income taxes for pre-statutory years were recomputed—and an appropriate refund or deficiency credited—by treating this charter hire as not having been received as income and deductions for depreciation and amortization of the ship as not having been allowable (Sections 9(b)(8) and 9(c)(1)). Thirdly, the applicant was credited with charter hire it would have received for the ship or ships it had traded in when it bought the war-built ship from Maritime (Section 9(b)(6)) and with interest representing income it would have received had it not invested funds in the vessel before the Act (Section 9(b)(5)). Correspondingly the government was

credited with federal income taxes on such charter hire and interest, these sums being treated as income in the year of the enactment of the statute (Sections 9(b)(8) and 9(c)(1)). In order to receive a Section 9 adjustment, an applicant was required to enter into a "binding" agreement with Maritime confirming the federal income tax consequences just described (Section 9(c)(1)), and overpayments of or deficiencies in federal taxes resulting from the described tax computations were treated, respectively, "as having been refunded" or "as having been paid" (Section 9(b)(8)) upon ultimate payment of an adjustment to the applicant.

Waterman applied for adjustments of the sales prices of its eighteen vessels purchased prior to the Act. The total original purchase price for these vessels was \$46,973,167 (after an allowance for the trade-in of four vessels).³ The statutory sales price of the eighteen vessels (after an allowance for the trade-in of the same four vessels) was determined by Maritime to be \$17,685,424.⁴ The difference (\$29,287,743) was credited to Waterman through Sections 9(b)(1)-(4) of the Act.⁵ The computations reflecting the unwinding of the pre-Act transactions and the

³ The total purchase price (without trade-in allowance) was \$49,582,767. (R. 41). The trade-in allowance was \$2,609,600. (R. 41).

⁴ The statutory price (without trade-in allowance) was \$17,997,981. (R. 44). The statutory trade-in allowance (determined under Section 9(b)(7)) was \$312,557. (R. 44-45).

⁵ The total \$29,287,743 purchase price credit was comprised of a cash credit of \$11,735,951 under Sections 9(b)(1) and (4) (R. 44) and a reduction of mortgage indebtedness of \$17,551,792 under Sections 9(b)(2) and (3) (R. 45).

substitution of the effects of transactions which would have occurred had sale been postponed to the date of the Act were as follows: (1) Maritime was allowed a credit of \$13,430,431 under Section 9(b)(6), representing a return of the charter hire which had been paid by Maritime to Waterman for the use of the vessels prior to the Act (R. 45); (2) Waterman was allowed a credit of \$1,495,125 under the same subsection, representing the amount which would have been paid by the United States as charter hire prior to the Act for the use of the four vessels traded in by Waterman when making the original purchase (R. 45-46); (3) Waterman was allowed a credit of \$2,686,262 under Section 9(b)(5) as interest (at the statutory rate of $3\frac{1}{2}\%$), representing income which would have been received on the funds invested in the eighteen vessels prior to the Act (R. 45); (4) Waterman was allowed a credit of \$430,206, representing the net refund of federal income taxes due to Waterman as a result of the tax consequences—including the disallowance of previous depreciation deductions—of the three preceding computations (R. 46). The sum of these four computations was a credit in favor of Maritime for \$8,818,838 (the charter-hire credit to Maritime minus the three credits to Waterman). This amount reduced the credit of \$29,287,743 due Waterman under subsections 9(b)(1)-(4) to \$20,468,904.*

* The mortgage indebtedness of Waterman was reduced by \$17,551,792 through Sections 9(b) (2) and (3) (R. 45) and the net cash credited to Waterman was \$2,917,112 (R. 47).

In tabular form, the computations and credits made under the Act were as follows: .

SCHEDULE I

Statutory Adjustments

1. Original purchase price (exclusive of trade-in)-----	\$46,973,167
2. Statutory sales price (exclusive of trade-in)-----	17,085,424
3. Gross price adjustment (§§ 9(b)(1)-(4) and (7))-----	\$29,287,743
4. Charter hire returned to Maritime (§ 9(b)(6))-----	13,430,431
5. Credits to Waterman:	
6. Charter hire on trade-ins (§ 9(b)(6))-----	(1,495,125)
7. Interest on Waterman's investment (§ 9(b)(5))-----	(2,686,262)
8. Refund of taxes paid on returned charter hire (line 4) less taxes due on credited charter hire and interest (lines 6 and 7) (§ 9(b)(8))-----	(430,206)
9. Net credit in favor of Maritime (line 4 minus lines 6-8)-----	8,818,838
10. Net payment to Waterman (line 3 minus line 9)-----	20,468,904 ^a

The question here is the effect of these adjustments and credits upon Waterman's basis in the eighteen vessels. The United States contends that the effect was twofold: first, by unwinding the depreciation and amortization tax deductions previously taken, Waterman's tax basis in the vessels was restored to its original cost basis in them at the time of purchase; secondly, this basis was reduced by \$29,287,743—the gross purchase price credit allowed Waterman for the difference between the statutory sales price for the vessels and the price Waterman actually paid for them. Under this

^a The figure \$20,468,904 is one dollar smaller than the difference between \$29,287,743 and \$8,818,838. This discrepancy is caused by the omission from these figures of amounts less than one dollar.

view, Waterman's adjusted cost basis after the statutory adjustment was \$17,685,424 plus the basis of the ships traded in (\$175,876) (R. 49), or \$17,861,300, exactly the basis Waterman would have had in the vessels if it had bought them at the statutory sales prices under the Act in 1946. Waterman, on the other hand, contends that its adjusted cost basis in the vessels after the adjustment was its original cost basis minus only the net statutory credit payable to Waterman after the credit to Maritime of \$8,818,838 had been subtracted. Thus Waterman would reduce its original cost basis by only \$20,468,904, rather than by \$29,287,743, producing a basis of \$26,504,263, plus the basis of the ships traded in, a resultant basis of \$26,680,139. The difference between the two contentions is \$8,818,838^{ab}, the net credit to Maritime as a result of the unwinding and substituted computations under Sections 9(b) (5), (6), (8) and 9(c)(1).

In tabular form, the tax contentions are as follows:

SCHEDULE II

Basis Computations as Claimed by the Parties

	Government	Waterman
1. Original purchase price (exclusive of trade-in).....	\$46,973,167	\$46,973,167
2. Gross price adjustment (Sch. I, line 3).....	29,287,743	
3. Net payment to Waterman (Sch. I, line 10).....		20,468,904
4. Adjusted price (exclusive of trade-in).....	17,685,424	26,504,263
5. Basis of ships traded in.....	175,876	175,876
6. Basis as of March 8, 1946.....	17,861,300	26,680,139

Taxpayer took depreciation on the vessels for the years 1947-1950 on the basis as asserted by the government and sued for refund. The district court

^{ab} This figure is one dollar lower than the difference between the figures shown, because all figures have been rounded off to dollar amounts.

(R. 170-175) allowed Waterman's claim. The Court of Appeals for the Fifth Circuit reversed and adopted the government's position (R. 183-186) (Judge Cameron dissenting, R. 187-191). Thereafter, the Third Circuit, affirming the United States District Court for the District of Delaware in a similar case (*National Bulk Carriers, Inc. v. United States*, 214 F. Supp. 585 (1963)), also adopted the government's view. *National Bulk Carriers, Inc. v. United States*, 331 F. 2d 407 (1964). (National Bulk has filed a petition for certiorari (No. 246)). Prior to these decisions, the Court of Claims had reached the opposite result. *Socony Mobil Oil Co. v. United States*, 287 F. 2d 910 (1961), rehearing denied, 289 F. 2d 326 (1961).

SUMMARY OF ARGUMENT

Full application of the provisions of the Merchant Ship Sales Act of 1946—including the explicit tax provisions of Section 9—results in a basis to an applicant receiving an adjustment under the Act equivalent to the basis the applicant would have had as a purchaser under the Act. This result is consistent with the expressed purpose of the Act to treat a vessel as to which an adjustment is applied for “as if it were being sold to the applicant on the date of the enactment of this Act and not before that time.” Taxpayer's contrary assertion depends upon the premise that the Act has no tax effects and that only the net adjustment credited under the Act affects an applicant's basis. This premise is demonstrably

⁷ The *National Bulk* opinions and the *Socony* opinion are reprinted in the Petition for Certiorari in this case, pp. 36-69.

wrong for it wholly ignores the explicit language of Sections 9(b)(8) and 9(c)(1) of the Act. If taxpayer were correct in this assertion, however, its basis would be even lower than under the government's submission, for the net credit would have to be deducted from taxpayer's *adjusted* basis in its vessels at the time of the Act, not from taxpayer's *original* basis, as it assumes. Finally, we point out that the legislative history is entirely consistent with the government's interpretation of the statute.

ARGUMENT

UNDER THE STATUTORY SCHEME, TAXPAYER'S BASIS, AFTER THE PURCHASE PRICE ADJUSTMENT WAS MADE, WAS THE BASIS IT WOULD HAVE HAD AS A POST-WAR PURCHASER UNDER THE ACT

Introduction

Section 9(b) of the Merchant Ship Sales Act of 1946 declares that a statutory adjustment "shall be made as hereinafter provided, by treating the vessel as if it were being sold to the applicant on the date of the enactment of this Act [March 8, 1946], and not before that time." The government's position in this case respects this expressed purpose by assigning a basis to a vessel, after the statutory adjustment, equivalent to the basis which would have existed had the vessel indeed been bought on the date of the enactment of the statute. Taxpayer's submission, on the other hand, would assign a basis considerably larger than the basis of a purchaser under the Act. As a result, taxpayer's theory would give it greater depre-

ciation deductions (and thus greater after-tax income) in the years following the Act than it would have had as a statutory purchaser. Its contention accordingly conflicts with the expressed purpose of Section 9(b).

The quoted language of Section 9(b) is, of course, a general directive not specifically addressed to federal income tax consequences. The precise question in this case is whether taxpayer was to be put in the same position *for federal income tax purposes* as if it had purchased its vessels under the Act rather than before the Act. We submit that the purpose of the Act to treat applicants for the statutory adjustment as though they had purchased under the Act *does* extend to their treatment for income tax purposes and, specifically, to the tax cost basis of their vessels. We seek to demonstrate this by a direct application of the subsections of Section 9(b) which, in detail, spell out the computations—including tax computations—which go to make up the adjustment payable under that section.

A. FULL APPLICATION OF THE STATUTORY PROVISIONS REQUIRES THE CONCLUSION THAT BASIS AFTER ADJUSTMENT WAS THE BASIS THE APPLICANT WOULD HAVE HAD AS A PURCHASER UNDER THE ACT

Section 9 of the Merchant Ship Sales Act of 1946 afforded wartime purchasers of merchant vessels the right to apply for price adjustments on their vessels. The primary purpose of this adjustment was to take account of the fact that wartime prices for vessels had been higher than the statutory prices at which vessels were to be sold under the Act. Subsections 9(b)(1) through (4) accordingly allowed a credit to

the wartime purchaser for the difference between the price it actually paid and the 1946 statutory sales price for a similar vessel.

If the Act had contained no additional adjustment provisions, its effect upon the basis of an applicant's vessels, for federal income tax purposes, would have been clear: The applicant's adjusted basis in the vessels immediately prior to the Act would have been reduced by exactly the amount of the purchase-price credit. The Act, however, did not simply provide a credit to an applicant for the cost differential between actual purchase price and postwar statutory price, for its aim was not merely to refund part of the purchase price but generally to treat the vessel "as if it were being sold to the applicant on the date of the enactment of this Act, and not before that time." Thus, Congress provided for additional adjustments (in subsections 9(b)(5) and 9(b)(6)). Their design was (1) to unwind charter hire transactions which actually occurred before the date of the Act and (2) to substitute credits reflecting transactions which would have occurred had sale been postponed until the date of the Act. Under these provisions, the charter hire actually paid by the United States to the applicant prior to the Act was credited to the United States (Section 9(b)(6)). On the other hand, the applicant was credited with charter hire and other income it would have received prior to the Act had the sale been postponed until the date of the Act (Sections 9(b)(5) and (6)).

Each of the transactions thus undone or postulated in order to put the applicant generally in the position

it would have occupied had the vessel not been sold until the date of the Act had, or would have had, federal income tax consequences. As part of the adjustment, therefore, the Act also directed recomputation of an applicant's federal income taxes. (Sections 9(b)(8) and 9(c)(1)). As a condition of receiving an adjustment under the Act, Section 9(c) required the applicant to agree (1) that the charter hire actually received from the United States for the war-built ships prior to the Act "shall be treated for Federal tax purposes as not having been received or accrued as income"; (2) that "depreciation and amortization allowed or allowable with respect to the vessel up to the date of the enactment of this Act for Federal tax purposes shall be treated as not having been allowable"; and (3) that the income attributed to the applicant as the interest and charter hire it would have received had it not bought the war-built vessels prior to the Act "shall be treated for Federal tax purposes as having been received and accrued as income in the taxable year in which falls the date of the enactment of this Act." The net sum derived from these tax recomputations was assigned as a credit to the party in whose favor they ran, and payment of this credit was explicitly deemed to constitute payment of the tax overpayment or deficiency created by the recomputations (Section 9(b)(8)).

As stated above, in the absence of provisions unwinding the actual pre-Act charter transactions and their federal income tax effects and substituting credits equivalent to different pre-Act transactions

and tax effects, a purchase price adjustment under the Act would simply have reduced the applicant's pre-Act adjusted cost basis in the vessels by the amount of the adjustment. The problem in the present case is to determine the different effect, if any, upon the taxpayer's basis resulting from the additional unwinding and substituting provisions just described, including the corresponding tax provisions. We submit that this effect can be correctly ascertained simply by applying each of the adjustment provisions of the Act—including the tax adjustment provisions—giving to each provision its natural effect upon the tax basis of the vessels. This is readily accomplished.

First. An applicant for an adjustment under the Act has previously received charter hire from the government for use of the vessels between the date of purchase and the date of the Act and has paid federal income taxes on these amounts. In computing these income taxes the applicant has taken depreciation and amortization deductions from his income. The deductions for depreciation and amortization have reduced the applicant's adjusted basis in the vessels by the amount of the deductions. (Section 113(b) of the Internal Revenue Code of 1939, Appendix A, *infra*, pp. 1a-2a). Aside from this lowering of the applicant's basis through allowable depreciation and amortization deductions prior to the Act, the receipt of taxable income and the payment of the proper tax thereon will have had no other effect upon the applicant's basis in the vessels prior to the Act.

Second. The Act unwinds the charter hire transactions between the applicant and the government occurring before the date of the Act and also unwinds the tax consequences of these transactions. The charter hire payments are restored to the government and federal income taxes paid thereon are restored to the applicant. As part of the tax computation, "depreciation and amortization allowed or allowable with respect to the vessel up to the date of the enactment of this Act for Federal tax purposes shall be treated as not having been allowable." (Section 9(c)(1)). The return of charter hire to the government and the corresponding return of the income taxes previously paid thereon to the applicant has, of itself, no effect upon the applicant's basis. This is simply the reversal of the receipt of taxable income and the payment of tax thereon, which had no effect upon basis when it occurred. However, the retroactive disallowance of the depreciation and amortization deductions previously taken by the applicant *does* have an effect upon basis favorable to the applicant. When these deductions were taken they decreased the applicant's basis. When the deductions are disallowed and their tax benefit taken away from the applicant and restored to the government, the opposite effect is achieved and the applicant's basis is increased by the amount of the disallowed deductions. Thus, the net effect upon basis is to restore an applicant's basis to its original cost basis in the vessels (plus or minus any proper adjustments to basis, such as adjustments for improvements made in the vessels by the applicant,

which are independent of the calculations under Section 9 of the Act).

Third. The Act does not stop with an unwinding of the pre-Act charter transactions. It goes on to substitute for those transactions credits reflecting the income which the applicant would have received had it (1) received charter hire from the government on vessels traded in to buy the war-built vessels and (2) received interest on funds invested in the war-built vessels. Federal income taxes are imposed upon these credits as though they were received in the year of enactment of the Act (1946). These substituted computations do not involve any refund upon the price of the war-built vessels nor do they involve any depreciation or amortization deduction taken with respect to that price. They simply attribute taxable income to the applicant to substitute for the charter hire actually received and require the payment of proper tax upon that income to the government. These substituted computations therefore have no effect whatsoever upon the basis of the war-built vessels.

Fourth. Thus far, the adjustments under the Act have restored the applicant's basis to his original cost basis (through unwinding the pre-Act charter transactions and substituting credits equivalent to substituted compensating transactions). The Act then credits a price adjustment to the applicant in the amount of the difference between the wartime price actually paid and the statutory price payable in 1946 on sales under the Act. In contrast to the credits described in paragraph *Third*, above, no federal

income tax is imposed by the Act on account of this credit. Plainly, then, the credit is treated by the Act as return of capital. As such, this credit has the effect of reducing, *pro tanto*, the applicant's basis in the vessels and, by the same token, limiting the future depreciation and amortization deductions which can be set off against income. Thus the basis, restored to the original cost basis by the unwinding computations (see paragraph *Second, supra*), is reduced in the amount of the price credit for the difference between the wartime price paid by the applicant and the statutory sales price of the vessel payable under the Act. As a result, the basis with which an applicant emerges from the Act is the original cost basis minus the difference between original cost and statutory cost. The resultant basis is exactly the cost basis which the applicant would have had as a postwar purchaser under the Act, thus complying with the purpose of Section 9 to treat the vessel "as if it were being sold to the applicant on the date of the enactment of this Act and not before that time."

Application of the foregoing analysis to taxpayer in this case produces the following result in dollars:

(1) Waterman purchased the eighteen vessels involved for \$46,973,167 plus a trade-in of four ships. Since the basis of the four ships traded in was \$175,876, its original cost basis in the eighteen vessels for federal income tax purposes was \$47,149,043. Between the time of its original purchase of the vessels and the date of the Act, Waterman took tax depreciation and amortization on the vessels. The record indicates

that this depreciation totalled in excess of \$10,000,000,* thus reducing Waterman's adjusted basis in the vessels to less than \$37,000,000.

(2) The unwinding of the pre-Act charter hire transactions with respect to the vessels resulted in a credit of \$13,430,431 to the government for the charter hire it had paid. Correspondingly, the federal income taxes which Waterman had paid on this charter income were credited to Waterman. As part of this tax computation Waterman was disallowed the deductions of depreciation and amortization previously taken. Thus Waterman's basis in the vessels was brought back to \$47,149,043.

(3) The credits to Waterman for income it would have received had it not bought the eighteen vessels prior to the Act (\$1,495,125 for charter hire on trade-in vessels and \$2,686,262 for interest) totalled \$4,181,387. Federal income taxes were imposed on this amount and credited to the government. Combined with the tax consequences described in the preceding paragraph the total tax adjustment was a credit of

* Appendix D, Exhibit G, column (d), Petitioner's Appendices in the Court. The figures in column (d) total \$11,300,665 (rounded to the nearest dollar). This covers depreciation taken only through October 31, 1945 (see column (a)) and does not include additional deductions taken between that date and March 8, 1946 (the date of the Act). However, Appendix D reproduces only the interim agreement between Maritime and Waterman computing Waterman's adjustment. As we state, *infra*, pp. 26-27, investigation has shown that the final agreement reflected total pre-Act depreciation deductions of somewhat less than \$11,000,000, a figure more favorable to taxpayer's present position than the figure shown in the interim agreement.

\$430,206 to Waterman. The tax and credit computations in this paragraph had no effect upon Waterman's basis in the eighteen war-built vessels.

(4) The purchase price credit due to Waterman was \$29,287,743—the difference between the statutory sales price of the eighteen vessels (\$17,685,424) and Waterman's original price (\$46,973,167) (both computed after an allowance for the trade-in of four vessels). This untaxed credit, representing a return of capital to Waterman, reduced Waterman's original cost basis in that amount. Waterman's original basis was \$47,149,043 (its original cost after trade-in allowance plus the \$175,876 basis of the four vessels traded in on the original sale). Thus Waterman's basis as a result of the Act became \$47,149,043 minus \$29,287,743, or \$17,861,300. This was exactly what Waterman's basis would have been had it purchased the eighteen vessels under the Act (the statutory cost of the vessels after trade-in allowance—\$17,685,424—plus the \$175,876 basis of the four vessels which were traded-in).

B. TAXPAYER'S ARGUMENT MISREADS THE STATUTE AND, EVEN IF ACCEPTED, WOULD NOT SUPPORT THE END-RESULT FOR WHICH IT CONTENTS

Taxpayer seems to concede that the government's position would be correct if the Act's adjustment provisions were indeed to be applied as just described. Taxpayer argues, however, that the Act's adjustment provisions should be treated as a unit, that a step by step application is erroneous, and that, in particular, federal tax effects are not to be attributed to the Act's

individual computations, which taxpayer views as merely steps in the computation of a single net adjustment credit. Taxpayer would thus attribute a federal income tax effect only to the settlement of the ultimate net credit and would simply reduce taxpayer's existing basis at the time of the Act by that amount. Taxpayer concludes that, immediately after settlement of the adjustment under the Act, its basis was its *original* cost basis in the vessels (\$47,149,043) minus the amount of the Act's net adjustment credit (\$20,468,904)—a resultant basis of \$26,680,139.

Taxpayer's argument is wrong for two reasons. *First*, the Act cannot be read, as taxpayer would have it, as intending tax consequences to flow only from the amount of the Act's net adjustment credit. As already indicated above, the intention to take account of the federal tax effects flowing from each individual adjustment under Section 9(b) is made absolutely explicit in the legislation. *Secondly*, even if taxpayer were right in urging that federal tax consequences flow only from the settlement of the net adjustment credit, taxpayer's computation is wrongly premised. The amount of the net statutory adjustment credit would indeed be deducted directly from basis if this view were correct, but the deduction would be taken from taxpayer's *adjusted* cost basis at the time of the Act, not from taxpayer's *original* cost basis at the time of the purchase. The difference between these two figures is substantial, amounting to more than \$10,000,000 in depreciation and amortization deductions taken by taxpayer on the vessels prior to the date

of the Act. As a result, if taxpayer's reading of the Act were correct, its basis would be some \$10,000,000 lower than it submits; it would in fact be in a worse tax position than under the government's reading of the Act (under which the basis is \$8,818,838 lower than taxpayer's submission).

1. The Act prescribes tax effects for the individual steps of the adjustment computation.

The principal interpretative issue between taxpayer and the United States is whether the Act prescribes federal tax effects flowing from individual computations under subsections 9(b)(5), (6) and (8), or whether the ultimate net adjustment credit is to be treated, for tax purposes, as a single indivisible unit, with federal tax effects flowing only from payment of the net amount of the credit. If tax effects *do* flow from the individual computations comprising the net credit, we have shown that taxpayer's cost basis in the vessels is first increased to its original cost basis (through the disallowance of depreciation and amortization deductions) and then reduced by \$29,287,743 (the purchase price credit), rather than by the net credit of \$20,468,904. This last result follows because, if the Act truly provides tax consequences, the \$8,818,838 difference between these two figures represents a portion of the repayment of taxable charter-hire income to Maritime, the previous tax upon which was simultaneously repaid to taxpayer under Sections 9(b)(8) and 9(c)(1). The repayment of income accompanied by the forgiveness of tax on such income has no effect upon the basis of property. To put it

another way, if the United States is correct in saying that the return of charter hire to Maritime was accompanied, under the Act, by the refund of the taxes previously paid by the taxpayer upon such charter hire income, the taxpayer thereby received a federal income tax benefit on account of the charter hire return. To attribute to the charter hire return (as taxpayer would) an increase in taxpayer's basis as well, would be to confer a second income tax benefit to taxpayer flowing from the single repayment of one amount of charter hire—a wholly anomalous result and one plainly opposed to the stated Congressional purpose of achieving parity as between wartime and post-1946 purchasers.

Taxpayer seeks to avoid the force of this analysis by suggesting that the return of charter hire was not, in fact, accompanied by a return of income taxes on the charter hire. This position is squarely contradicted by Section 9 of the Act. Section 9(c) explicitly provides that, in order to qualify for an adjustment under the Act, an applicant must enter into an agreement that, "*for Federal tax purposes*" (not merely for purposes of making a computation, as taxpayer argues) depreciation and amortization deductions taken on the vessels before the Act "shall be treated as not having been allowable," charter hire received before the Act and returned under Section 9(b)(6) shall be treated "as not having been received or accrued as income," and income credited to the applicant under Sections 9(b)(5) and 9(b)(6) (as income which the applicant would have received had it not bought the ships until the date of the Act)

shall be treated "as having been received and accrued as income" in 1946. Section 9(b)(8) further explicitly provides that the "overpayments of Federal taxes" and "deficiencies in Federal taxes" resulting from the application of this agreement are to be "subtracted from the sum of the credits" due Maritime or the applicant under the previous provisions of Section 9. Finally, Section 9(b)(8) provides that upon the payment of the net resulting credit, "such overpayments [of federal taxes] shall be treated as having been refunded and such deficiencies [of federal taxes] as having been paid."

The obvious, indeed the only conceivable, purpose of these explicit provisions was to make it clear that tax effects were to flow from the individual computations leading up to the Act's net adjustment. There would have been no other reason for the Act to require the applicant to enter "into an agreement * * * binding upon the citizen applicant and any affiliated interest" confirming the tax consequences of the computations, nor would there have been any reason to provide that, upon payment of the net credit under the Act, "overpayments [of federal taxes] shall be treated as having been refunded and * * * deficiencies [of federal taxes] as having been paid." (Section 9(b)(8)). As a result the \$8,818,838 net credit to Maritime deducted from the \$29,287,743 purchase price adjustment in reaching the net adjustment represented a return of untaxed ordinary income. As such, it could have no effect upon taxpayer's resulting tax basis.

The correctness of the government's reading is confirmed by reference to the conceded purpose of the

Act: To make the Section 9 adjustment "by treating the vessel as if it were being sold to the applicant on the date of the enactment of this Act, and not before that time." (Section 9(b)). To give effect to this statutory direction, the tax basis of an applicant receiving an adjustment should be the 1946 cost of such vessels, adjusted to take account of unrecognized gain on the trade-in of vessels and other effects upon basis independent of Section 9, such as capital improvements made in the vessels by taxpayer prior to the Act. The government's reading of the Act achieves just this result. Under taxpayer's view, on the other hand, the basis of an applicant receiving the statutory adjustment would turn on the amount of taxable charter hire received before passage of the Act and would bear no relationship to the basis the applicant would have had as a statutory purchaser. Insofar as there is any ambiguity in the provisions of Section 9—and we submit that in fact there is none—the ambiguity must certainly be resolved to accord with the general direction of Section 9 to treat the vessel (and its basis) as if it had been purchased under the Act.

Finally, there is no support for taxpayer's suggestion (Pet. Br. pp. 76-77) that, had the Act intended post-adjustment basis to be as the government contends, it would have thus provided in so many words. A provision that basis after adjustment was to be the statutory purchase price would have been erroneous, for it would not have taken account of adjustments to basis flowing from unrecognized gain in the trade-in of vessels and capital improvements made in the war-built vessels by the applicant before the date of the Act—adjustments to which an applicant was plainly

entitled. A provision precisely describing the basis of vessels in light of these and other possible adjustments would have been enormously complicated and entirely redundant in light of the tax provisions of Sections 9(b)(8) and 9(c)(1) which, when literally applied, lead, as we have shown, directly to the desired result. The Act is in fact quite explicit as to its tax effects. The only tax consequences left implicit are the effects upon tax basis of the disallowance of depreciation and amortization deductions through Section 9(c)(1) and of the allowance of the purchase-price credit provided by subsections 9(b)(1)-(4). These effects flow directly from ordinary tax principles applicable to payments constituting a return of capital. (See Section 113(b)(1) of the Internal Revenue Code of 1939, Appendix, *supra*, pp. 1a-2a.) While the Act could have declared *in haec verba* that the disallowance was to increase basis and that the purchase-price credit was to reduce it, the short of it is that those consequences are entirely routine under our system of income taxation.

2. *If only the net adjustment under the Act affects basis, taxpayer's basis, properly determined, would actually be lower than under the government's application of the statute.*

Under taxpayer's view, one should ignore the explicit tax provisions of the Act and compute an applicant's basis by simply deducting the net credit to an applicant from the basis in the vessels just prior to the Act. The Section 9 adjustment would thus be treated as would any ordinary refund upon purchase price, reducing taxpayer's net investment in the vessels and consequently reducing its basis by the amount of the refund.

This view is incorrect because, while an ordinary refund upon purchase price is accompanied by no federal income tax adjustments, the statutory refund in this case was, as we have shown, accompanied by tax adjustments modifying the impact of the net refund upon basis. If this view *were* correct, however, the basis from which the refund would be deducted would be the existing adjusted basis in the vessels just prior to the Act, not the *original* cost basis of the vessels (as taxpayer states). For example, if an asset were bought for \$100, if \$20 tax depreciation were subsequently taken (reducing the basis to \$80), and if a \$20 refund upon purchase price were then received, the resulting basis in the asset would be \$60, not \$80.

The interim agreement between taxpayer and Maritime entered into pursuant to Section 9(c)(1) of the Act shows that depreciation and amortization deductions taken by taxpayer prior to the Act on the vessels here involved were in excess of \$11,000,000. (Ex. G, col. (d) to the agreement, printed after page D-16 in the Appendices to Petitioner's Brief). In fact, investigation by the United States of the computations underlying the final agreement—which, as printed in the Record, does not show the calculations going to make up the Section 9 tax adjustment—shows the amount of these deductions as \$10,835,683, a figure more favorable to taxpayer's position than the figure shown in the interim agreement. If, therefore, taxpayer's theory were to be accepted, its

basis after the Act would be calculated by subtracting the net-adjustment credit under the Act (\$20,468,904) from the adjusted basis just before the Act, which could have been no more than \$37,000,000 (the original basis of \$47,149,043 less at least \$10,000,000). As a result, taxpayer's basis immediately after receiving the adjustment under the Act would be roughly \$16,500,000, an amount more than \$10,000,000 less than the figure it submits and more than \$1,000,000 less than the basis under the government's proper application of the statute.

We do not urge this result. We submit that the net statutory adjustment is irrelevant for purposes of determining taxpayer's basis; for the *net* adjustment does not represent the actual return of capital to the applicant, but only the return of capital diminished by the return to the government of untaxed pre-Act charter hire after pre-Act transactions are unwound. The proper computation requires (1) re-adjusting taxpayer's basis upwards as the result of the disallowance under Section 9(c)(1) of previous depreciation and amortization deductions which had reduced original basis, and (2) diminishing the re-adjusted basis by the purchase-price adjustment in subsections 9(b)(1)-(4), the amount of which adjustment does, in fact, represent a return of capital. It is necessary to give the Act independent federal income tax effect in order to restore an applicant's basis to its original cost basis before deducting the purchase price adjustment. If taxpayer's interpretation of the

Act were to be accepted, however, that would necessitate either affirmance (if taxpayer concedes that depreciation and amortization amounted to more than \$8,818,838) or remand to the district court for determination of taxpayer's precise adjusted basis just prior to the adoption of the Act.

C. THE LEGISLATIVE HISTORY IS ENTIRELY CONSISTENT WITH THE
GOVERNMENT'S VIEW

As the courts below found, the legislative history of the Act supports the government's view. Specifically, the Conference Report on the bill as enacted shows that Congress clearly understood Section 9 as providing for three separate kinds of adjustments: (1) an adjustment of the purchase price; (2) an adjustment unwinding the pre-Act charter hire transactions and their tax effects; (3) an adjustment substituting income and taxes which the applicant would have had, had purchase been delayed until the date of the Act.⁹ As we have shown above, application of the Act as thus providing three separate types of adjustment leads directly to the conclusion that basis after

⁹ ADJUSTMENTS OF PRIOR SALES TO CITIZENS *

Both the House bill and the Senate amendment provided for (1) adjustment of the original purchase price, (2) adjustment of the charter hire, (3) adjustment of trade-in allowance in connection with the prior original purchase, and (4) adjustments of taxes paid on account of ownership of the vessel.

Under the House bill the owner would receive as an adjustment the difference between the statutory sales price of the vessel computed as of the date of enactment of the act and the

adjustment is equivalent to the basis an applicant would have had as a purchaser under the Act.

Taxpayer suggests in its brief (pp. 42-69) that changes made between earlier versions of the Act and the version ultimately passed militate against the government's position. The Act went through several

price he originally paid for the vessel. The owner would return all charter hire previously received or allowed by the Government during his ownership of the vessel. The owner would be allowed $8\frac{1}{2}$ percent interest on his original purchase price (but where there was a trade in, only on the difference between his original purchase price and the allowance under the trade in). Under the House bill where the original purchase involved the trade in of an old vessel, the trade in allowance is adjusted in accordance with the trade in standards prescribed under section 8 of the House bill (top limit of 10 percent of the war cost). The owner would be allowed charter hire on the traded in vessel.

Under the Senate amendment the owner would receive as an adjustment the difference between the original price (depreciated at 5 percent plus 3 or 4 percent war service) and the statutory sales price for the vessel determined as of the date of enactment of the measure. Under the Senate amendment the owner would return the difference between the charter hire he received from the Government while he owned the vessel and the charter hire he would have received had the price of the vessel been the adjusted price arrived at under the act. Under the Senate amendment the owner would receive credit for the interest he actually paid to the Government on the deferred account of his original purchase price. The Senate amendment also provides for an adjustment of the trade in allowance for a vessel traded in on the original purchase, in accordance with section 8 of the Senate amendment (which prescribes a top limit of one-third of the unadjusted statutory sales price). Under the Senate amendment no provision is made for allowance for charter hire of the traded in vessel.

The conference agreement restores the House provisions on the points stated in the two preceding paragraphs. [House Conf. Rep. No. 1526, 79th Cong., 2d Sess. 17 (1946).]

versions before settling in the form which ultimately became law. The principal difference, for present purposes, between the immediate predecessors of the final version (set out in Appendix C to Petitioner's Brief) and the version which became law was that, in the predecessors, the adjustment to pre-Act purchasers was to be made as though the Act had been in force when the vessels were actually purchased, while in the version which became law the adjustment was to be made as though the purchase had not taken place until the date of the Act. Thus, while both the immediate predecessors to the final bill and the final version itself contained provisions adjusting the difference between actual purchase price and statutory purchase price, the additional adjustment feature of the predecessors was a recomputation of pre-Act transactions as though the prior sale had been at the lower, statutory price (thus diminishing pre-Act charter hire, depreciation, etc.), whereas the additional adjustment feature of the final version was an unwinding of pre-Act transactions and a substitution of credits representing transactions which would have taken place had the sale not occurred prior to the date of enactment of the Act. Therefore, no significance, for the purposes of tax basis, can be drawn from the fact that the predecessors provided that, for adjustment purposes, the vessel "shall be considered as having been acquired at the adjusted purchase price" (Pet. Br. p. 54; Pet. Br., App. C-9), while the enacted version contained no such provision. Adjustments of pre-Act transactions under the enacted

version were to be made as though sale had not occurred until the date of the Act. There was therefore no occasion to provide that, for adjustment purposes, the vessel should be "considered as having been acquired" at the statutory price. Such a provision was necessary, however, under the predecessor bills because they proposed to recompute pre-Act transactions as though sale under the Act had *already* taken place at the statutory price.

The version of Section 9 of the Act which became law was proposed as a committee amendment on the floor of the House. (Pet. Br. p. 47; 91 Cong. Rec. Part 7, p. 9281.) The principal reason expressed for the amendment was the view that the existing version of the bill, by treating the Act as having been in force when the wartime sales were actually made, resulted in excessive refunds to applicants for adjustment. The purpose was to change the bill "so that the previous purchaser and a future purchaser will be put on exactly the same basis." (91 Cong. Rec. Part 7, p. 9282.)

Representative Henry Jackson, the manager of the committee amendment on the floor, explained it as follows (91 Cong. Record, Part 7, pp. 9182, 9185, 9282):

Section 9 of H.R. 3603 provides for a refund to operators who purchased vessels during the war, at war cost, back to the statutory sales price contained in section 3 of the bill. Such an adjustment is fair. We do not want to place the wartime purchaser at a disadvantage with his competitor who acquires a similar vessel under the provisions of this bill.

However, section 9 contains many loopholes which in my opinion places the wartime purchaser in a far better position than future purchasers. For one thing, the wartime purchaser, under section 9, would be allowed trade-in allowances far in excess of those provided under the committee amendment to section 8.

If there is to be equality between past and future purchases there must be comparable terms and nothing less. * * *

I have proposed certain modifications to Section 9 of H.R. 3603 which has been accepted as a committee amendment. The effect of this amendment is to treat prior sales as having taken place on the date of the enactment of this bill. The operator is compensated for all actual money investment to date by an allowance of $3\frac{1}{2}$ percent interest thereon.

The adjustments to be made under section 9 of H.R. 3603 would amount to a refund of over \$89,000,000 to wartime purchasers. The modifications I proposed would reduce this sum to approximately \$60,000,000. The committee amendment changes certain of my modifications over my opposition, granting an additional refund of \$8,000,000 above the \$60,000,000. I should like to state that my amendment to be offered tomorrow, raising the statutory sale price of tankers would further reduce the funds by about \$15,000,000.

The committee amendment treats all of these prior sales as being made on the date of the bill's enactment and not before that time, so

that the previous purchaser and a future purchaser will be put on exactly the same basis. In order to accomplish this result it is necessary to "unwind" a previous transaction, and most of the provisions of the committee amendment which appear complicated are the provisions describing how this unwinding is to be done.

* * * *

These are the provisions which the amendment includes for the purpose of unwinding the previous transaction. The basic principle of the amendment is very simple—the previous transaction is to be looked upon as having taken place not when it actually did but as taking place on the date of the bill's enactment and subject to all of the bill's provisions. * * * [Emphasis added.]

If pre-Act and post-Act purchasers were to be put "on exactly the same basis" as a result of this amendment, it would be necessary to treat them as having the same capital investment in their similar vessels and, hence, as having equivalent cost bases for federal income tax purposes. Otherwise, purchasers having a higher cost investment for tax purposes would obtain advantageous economic leverage through their ability to take higher depreciation and amortization deductions from income, thus paying lower taxes on the same income than competitors having a lower tax basis.¹⁰

¹⁰ See *Socony Mobil Oil Co. v. United States*, 279 F.2d 512, 515 (Ct. Cl. 1960). It is significant that the Maritime Commission has always treated the statutory sales price of a Section 9 vessel as its cost for subsidy purposes. Federal Maritime Board

Finally, taxpayer (Br. 71-76) relies upon an attempt to amend the Merchant Ship Sales Act in 1949-1950 to provide precisely the tax advantage sought by taxpayer in this case.¹¹ This change passed both

Regulations, 46 C.F.R., Sec. 284.2(b)(3). This regulation is entitled to considerable weight since it was issued by the Government agency charged with the administration of the Merchant Ship Sales Act and dates back over fifteen years to December 20, 1949, 14 Fed. Register, Part 7, p. 7589.

Taxpayer asserts (Br. 25-29) that Maritime's position was, like taxpayer's, that Section 9 in its entirety resulted in a net price adjustment and did nothing more. The Regulations and computation documents of Maritime discussed by taxpayer (Br. 25-29) were simply promulgated and used as aids in making the various computations under Section 9. They do not deal with cost basis. The Maritime Regulations referred to in the first paragraph of this footnote do deal specifically with cost basis (stating it to be the statutory sales price, for vessels whose prices were adjusted under Section 9 of the Merchant Ship Sales Act); and specifically refer to the depreciation to be taken thereon.

It was also in 1949 (two years prior to the final agreement between Maritime and taxpayer as to Section 9 adjustments (R. 51-62)) that the Commissioner of Internal Revenue announced (Mim. 6366, 1949-1 Cum. Bull. 270, 272) that for federal tax purposes, on and after March 8, 1946, the basis under Section 113(a) of the Internal Revenue Code (of 1939) of a vessel on which an adjustment under Section 9 of the Merchant Ship Sales Act had been made was the statutory sales price as determined by Maritime under the Act.

¹¹ The amendment would have provided, as an addition to subsection 9(b) of the Act:

From and after March 8, 1946, the cost basis of a vessel in respect of which the price adjustment is made shall be the undepreciated original purchase price reduced by the net amount of such adjustment in favor of the applicant resulting from the application of all of the foregoing provisions of this subsection.

See H. Rep. No. 1342, 81st Cong., 1st Sess., p. 5; S. Rep. No. 1915, 81st Cong., 2d Sess., p. 5.

Houses of Congress but was vetoed by President Truman (96 Cong. Record, Part 12, p. 15792) who observed that

other provisions of the Merchant Ship Sales Act already provide that for certain purposes the cost basis of the vessels owned by prior purchasers shall be the statutory sales price.¹² The consistent pattern of treatment provided in the act would be destroyed by granting in this one subsection the concession on cost basis entailed in this measure. Finally, the benefits accruing to prior purchasers, if they are allowed to capitalize these amounts above the statutory sales price, would afford them the special operating advantages which arise from the higher depreciation allowances possible under this measure.

It may be that many of the legislators who supported this tax-benefit legislation in 1949 and 1950 believed it would merely clarify the 1946 Act. The new legislation failed, however, because the President

¹² The provisions referred to are Section 9(c)(2) and 9(c)(3). Section 9(c)(2) provides that the liability of the United States for post-enactment vessel use should not exceed 15 percent of the statutory sales price and that the liability of the United States for loss of the vessel should be determined on the basis of the statutory sales price. Section 9(c)(3) provides that the compensation payable by the United States for a taking or bare-boat charter subsequent to the Act should not be greater than 15 percent of the statutory sales price. The application of Section 9(c)(2) was ended by amendment in 1956 (Act of August 6, 1956, c. 1013, 70 Stat. 1068) because, for no apparent reason, those who purchased under the Act were not subject to Section 9(c)(2), and therefore, it was believed that those buying before should be equally treated. 103 Cong. Record, Part 2, pp. 1759-1760.

(the same President who had approved the 1946 Act) believed this justification false. In his view, the proposed legislation changed the Act; under it, he declared, "the consistent pattern of treatment provided in the act would be destroyed." The most that can be said for taxpayer's contention is that the President and a subsequent Congress disagreed over the meaning of the prior legislation, and that the President, deeming the amendment to constitute a significant change, refused to approve it and that it therefore failed of enactment. In these circumstances, there is particular force in the precept that "the views of a subsequent Congress form a hazardous basis for inferring the intent of an earlier one," *United States v. Price*, 361 U.S. 304, 313, quoted in *United States v. Philadelphia National Bank*, 374 U.S. 321, 348-349. See also, *Fogarty v. United States*, 340 U.S. 8, 13-14; *United States v. Wise*, 370 U.S. 405, 411: "The interpretation placed upon an existing statute by a subsequent group of Congressmen who are promoting legislation and who are unsuccessful has no persuasive significance here."

The government relies upon the statute as written in 1946 and upon the declaration of the Congress which enacted it.

CONCLUSION

For the reasons stated, the judgment of the court of appeals should be affirmed. If, however, taxpayer's interpretation of the Act should be accepted and taxpayer's adjusted basis prior to the Act is not stipulated, the case should be remanded to the district court for a determination of taxpayer's adjusted basis

immediately prior to enactment of the Merchant Ship
Sales Act of 1946.

Respectfully submitted.

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APPENDIX

Internal Revenue Code of 1939:

SEC. 23. DEDUCTIONS FROM GROSS INCOME.

In computing net income there shall be allowed as deductions:

(1) [As amended by Sec. 121(c) of the Revenue Act of 1942, c. 619, 56 Stat. 798] *Depreciation*.—A reasonable allowance for the exhaustion, wear and tear (including a reasonable allowance for obsolescence)—

(1) of property used in the trade or business,

(n) *Basis for Depreciation and Depletion*.—The basis upon which depletion, exhaustion, wear and tear, and obsolescence are to be allowed in respect of any property shall be as provided in section 114.

(26 U.S.C. 1952 ed., Sec. 23.)

SEC. 113. ADJUSTED BASIS FOR DETERMINING GAIN OR LOSS.

(a) *Basis (Unadjusted) of Property*.—The basis of property shall be the cost of such property;

(b) *Adjusted Basis*.—The adjusted basis for determining the gain or loss from the sale or other disposition of property, whenever acquired, shall be the basis determined under subsection (a), adjusted as hereinafter provided.

(1) *General rule*.—Proper adjustment in respect of the property shall in all cases be made—

(A) [As amended by Section 130(b) of the Revenue Act of 1942, *supra*] For expendi-

tures, receipts, losses, or other items, properly chargeable to capital account, but no such adjustment shall be made for taxes or other carrying charges * * * for which deductions have been taken by the taxpayer in determining net income for the taxable year or prior taxable years;

(B) [As amended by Sec. 1 of the Act of July 14, 1952, c. 741, 66 Stat. 629] in respect of any period since February 28, 1913, for exhaustion, wear and tear, obsolescence, amortization, and depletion, to the extent of the amount—

(i) allowed as deductions in computing net income under this chapter or prior income tax laws, * * *

(26 U.S.C. 1952 ed., Sec. 113.)

SEC. 114. BASIS FOR DEPRECIATION AND DEPLETION.

(a) *Basis for Depreciation.*—The basis upon which exhaustion, wear and tear, and obsolescence are to be allowed in respect of any property shall be the adjusted basis provided in section 113(b) for the purpose of determining the gain upon the sale or other disposition of such property.

* * * * *

(26 U.S.C. 1952 ed., Sec. 114.)

Merchant Ship Sales Act of 1946, c. 82, 60 Stat. 41 as amended by Reorganization Plan No. 21 of 1950, 64 Stat. 1273, 1276:

SEC. 2. (a) It is necessary for the national security and development and maintenance of the domestic and the export and import foreign commerce of the United States that the United States have an efficient and adequate American-owned merchant marine (1) sufficient to carry its domestic water-borne commerce and a substantial portion of its water-borne export and import foreign commerce and to provide shipping service on all routes essential for maintaining the flow of such domestic and foreign water-borne commerce at all times; (2) capable of

serving as a naval and military auxiliary in time of war or national emergency; (3) owned and operated under the United States flag by citizens of the United States; (4) composed of the best-equipped, safest, and most suitable types of vessels, constructed in the United States and manned with a trained and efficient citizen personnel; and (5) supplemented by efficient American-owned facilities for shipbuilding and ship repair, marine insurance, and other auxiliary services.

(b) It is hereby declared to be the policy of this Act to foster the development and encourage the maintenance of such a merchant marine.

(50 U.S.C. App., 1952 ed., Sec. 1735.)

SEC. 3. As used in this Act the term—

(a) "Secretary" means the Secretary of Commerce.

(b) "War-built vessel" means an oceangoing vessel of one thousand five hundred gross tons or more, owned by the United States and suitable for commercial use—

(1) which was constructed or contracted for by or for the account of the United States during the period, beginning January 1, 1941, and ending with September 2, 1945; or

(2) which, having been constructed during the period beginning September 3, 1939, and ending with September 2, 1945, was acquired by the United States during such period.

(c) "Prewar domestic cost," as applied to any type of vessel, means the amount determined by the Secretary, and published by the Secretary in the Federal Register, to be the amount for which a standard vessel of such type could have been constructed (without its national defense features) in the United States under normal conditions relating to labor, materials, and other elements of cost, obtaining on or about January 1, 1941. In no case shall the prewar domestic cost of any type of vessel

be considered to be greater than 80 per centum of the domestic war cost of vessels of the same type.

(d) "Statutory sales price", as applied to a particular vessel, means, in the case of a dry-cargo vessel, an amount equal to 50 per centum of the prewar domestic cost of that type of vessel, and in the case of a tanker, such term means an amount equal to $87\frac{1}{2}$ per centum of the prewar domestic cost of a tanker of that type, such amount in each case being adjusted as follows:

(1) If the Secretary is of the opinion that the vessel is not in class, there shall be subtracted the amount estimated by the Secretary as the cost of putting the vessel in class.

(2) If the Secretary is of the opinion that the vessel lacks desirable features which are incorporated in the standard vessel used for the purpose of determining prewar domestic cost, and that the statutory sales price (unadjusted) would be lower if the standard vessel had also lacked such features, there shall be subtracted the amount estimated by the Secretary as the amount of such resulting difference in statutory sales price.

(3) If the Secretary is of the opinion that the vessel contains desirable features which are not incorporated in the standard vessel used for the purpose of determining prewar domestic cost, and that the statutory sales price (unadjusted) would be higher if the standard vessel had also contained such features, there shall be added the amount estimated by the Secretary as the amount of such resulting difference in statutory sales price.

(4) There shall be subtracted, as representing normal depreciation, an amount computed by applying to the statutory sales price (determined without regard to this paragraph) the rate of 5 per centum per annum for the period beginning with the date of the original delivery

of the vessel by its builder and ending with the date of sale or charter to the applicant in question, and there shall also be subtracted an amount computed by applying to the statutory sales price (determined without regard to this paragraph) such rate not in excess of 3 per centum per annum in the case of a vessel other than a tanker, and not in excess of 4 per centum per annum in the case of a tanker, for such period or periods of war service as the Secretary determines will make reasonable allowance for excessive wear and tear by reason of war service which cannot be or has not been otherwise compensated for under this subsection.

No adjustment, except in respect of passenger vessels constructed before January 1, 1941, shall be made under this Act which will result in a statutory sales price which (1) in the case of dry-cargo vessels (except Liberty type vessels) will be less than 35 per centum of the domestic war cost of vessels of the same type, (2) in the case of any Liberty type vessel will be less than $31\frac{1}{2}$ per centum of the domestic war cost of vessels of such type, or (3) in the case of a tanker will be less than 50 per centum of the domestic war cost of tankers of the same type. For the purposes of this Act, except section 5, all Liberty vessels shall be considered to be vessels of one and the same type.

(e) "Domestic war cost" as applied to any type of vessel means the average construction cost (without national defense features) as determined by the Secretary, of vessels of such type delivered during the calendar year 1944, except in case of any type of vessel the principal deliveries of which were made after the calendar year 1944, there shall be used in lieu of such year 1944 such period of not less than six consecutive calendar months as the Secretary shall find to be most representative of war production costs of such type.

(f) "Cessation of hostilities" means the date proclaimed by the President as the date of the cessation of hostilities in the present war, or the date so specified in a concurrent resolution of the two Houses of the Congress, whichever is the earlier.

(g) "Citizen of the United States" includes a corporation, partnership, or association only if it is a citizen of the United States within the meaning of section 2 of the Shipping Act of 1916, as amended. The term "affiliated interest" as used in sections 9 and 10 of this Act includes any person affiliated or associated with a citizen applicant for benefits under this Act who the Secretary, pursuant to rules and regulations prescribed hereunder, determines should be so included in order to carry out the policy and purposes of this Act.

(50 U.S.C. App., 1952 ed., Sec. 1736.)

SEC. 4. (a) Any citizen of the United States may make application to the Secretary to purchase a war-built vessel, under the jurisdiction and control of the Secretary, at the statutory sales price. If the Secretary determines that the applicant possesses the ability, experience, financial resources, and other qualifications, necessary to enable him to operate and maintain the vessel under normal competitive conditions, and that such sale will aid in carrying out the policies of this Act, the Secretary shall sell such vessel to the applicant at the statutory sales price.

(b) At the time of sale, the purchaser shall pay to the Secretary at least 25 per centum of the statutory sales price. The balance of the statutory sales price shall be payable in not more than twenty equal annual installments, with interest on the portion of the statutory sales prices remaining unpaid, at the rate of $3\frac{1}{2}$ per centum per annum, or shall be payable under such other amortization provisions which permit the purchaser to accelerate payment of

the unpaid balance as the Secretary deems satisfactory. The obligation of the purchaser with respect to payment of such unpaid balance with interest shall be secured by a preferred mortgage on the vessel sold.

(c) The contract of sale, and the mortgage given to secure the payment of the unpaid balance of the purchase price, shall not restrict the lawful or proper use or operation of the vessel.

(50 U.S.C. App. 1952 ed., Sec. 1737.)

* * * * *

SEC. 8. (a) The Secretary is authorized to acquire, in exchange for an allowance of a credit on the purchase of any war-built vessel under section 4 or any vessel acquired through exchange under subsection (d) of this section—

(1) Any vessel owned by a citizen of the United States, other than a vessel purchased under this Act; or

(2) Any vessel owned by a foreign corporation, if—

(A) the vessel was constructed in the United States, and has, after December 7, 1941, been chartered to, or otherwise taken for use by, the United States; and

(B) the controlling interest in such corporation is, at the time of acquisition of such vessel hereunder, owned by a citizen or citizens of the United States, and has been so owned for a period of at least three years immediately prior to such acquisition; and

(C) such corporation agrees that the war-built vessel purchased with the use of such credit shall be owned by such citizen or citizens and shall be documented under the laws of the United States.

Such allowance shall not be applied upon the cash payment required under section 4. A war-built vessel shall be deemed a "new vessel" for the purpose of section 511 of the Merchant Marine Act, 1936, as amended, and section 510 (e) of such Act shall be applicable with respect to vessels exchanged under this section to the

same extent as applicable to obsolete vessels exchanged under section 510 of such Act.

(b)(1) If, prior to December 31, 1946, the owner of a vessel eligible for exchange under subsection (a) makes a firm offer binding for at least ninety days, to transfer the vessel to the Secretary in exchange for an allowance of credit provided in subsection (a), the amount of such allowance shall be the fair and reasonable value of the vessel as determined by the Secretary under this section. In making such determination the Secretary shall consider: (A) The value of the vessel determined in accordance with the standards of valuation established pursuant to Executive Order 9387 (8 F.R. 14105) as of the date of such offer, (B) any liability of the United States for repair and restoration of the vessel, (C) the utility value of the vessel, (D) the effect of this Act upon the market value of such vessel, and (E) the public interest in promoting exchanges of vessels as a means of rehabilitating and modernizing the American merchant marine. In no event shall the amount of such allowance, in case of dry cargo vessels and tankers, exceed (A) (1) if the vessel or vessels tendered in exchange are of equal or greater dead-weight tonnage than the war-built vessels or vessels being acquired, $33\frac{1}{3}$ per centum of the statutory sales price (unadjusted) of the war-built vessel or vessels, or (2) if the vessel or vessels tendered in exchange are of lesser dead-weight tonnage than the war-built vessel or vessels, such proportionate part of $33\frac{1}{3}$ per centum of the statutory sales price (unadjusted) of such war-built vessel or vessels as the dead-weight tonnage of such vessel or vessels tendered in exchange bear to the dead-weight tonnage of such war-built vessel or vessels, or (B) the liability of the United States in connection with the repair or restoration of such vessel under any charter to which the United States is a

party, whichever is higher. In the case of passenger vessels tendered in exchange, the amount of the allowance shall not exceed the percentages of statutory sales price computed under (A) (1) and (2) above by gross tons instead of dead-weight tons, or such liability for the repair or restoration of such passenger vessel, whichever is the higher. In any case where the vessel tendered in exchange was acquired from the United States, the exchange allowance under this section shall not exceed the price paid the United States therefor plus the depreciated cost of any improvements thereon. In the case of any vessel tendered in exchange which has been restored to condition by the United States for the purpose of redelivering such vessel to its owner in compliance with the charter of such vessel with the United States, or where, for such restoration a cash allowance has been made to the owner, there shall be deducted from the amount of the allowance of credit for such vessel determined by the Secretary under this section, an amount equal to the liability of the United States for such restoration or such cash allowance made to the owner.

(2) If, after such offer is made, and prior to its acceptance, or prior to the acquisition of the vessel, by the Secretary, the vessel is lost by reason of causes for which the United States is responsible, then in lieu of paying the owner any amount on account of such loss, the offer shall, for the purposes of subsection (a) and this subsection, be considered as having been accepted and the vessel as having been acquired by the Secretary under subsection (a) immediately prior to such loss.

(c) The Secretary is also authorized to make available any war-built vessel for transfer in complete or partial settlement of any claim against the United States (1) for just compensation upon requisition for title of any vessel, or (2) for indemnity for the loss of any

vessel which was acquired for use by the United States, but only to the extent such vessel is available for sale to the claimant.

(d) In the case of any vessel constructed in the United States after January 1, 1937, which has been taken by the United States for use in any manner, the Secretary, if in its opinion the transfer would aid in carrying out the policies of this Act, is authorized to transfer to the owner of such vessel another vessel which is deemed by the Secretary to be of comparable type with adjustments for depreciation and difference in design or speed, and to the extent applicable, adjustments with respect to the retained vessel as provided for in section 9, and such other adjustments and terms and conditions, including transfer of mortgage obligations in favor of the United States binding upon the old vessel, as the Secretary may prescribe.

(50 U.S.C. App., 1952 ed., Sec. 1741)

SEC. 9. (a) A citizen of the United States who on the date of the enactment of this Act—

(1) owns a vessel which he purchased from the Secretary prior to such date, and which was delivered by its builder after December 31, 1940; or

(2) is party to a contract with the Secretary to purchase from the Secretary a vessel, which has not yet been delivered to him; or

(3) owns a vessel on account of which a construction-differential subsidy was paid, or agreed to be paid, by the Secretary under section 504 of the Merchant Marine Act, 1936, as amended, and which was delivered by its builder after December 31, 1940; or

(4) is party to a contract with a shipbuilder for the construction for him of a vessel, which has not yet been delivered to him, and on account of which a construction-differential subsidy was agreed, prior to such date, to be paid by the Secretary under section 504 of the Merchant Marine Act, 1936, as amended;

shall, except as hereinafter provided, be entitled to an adjustment in the price of such vessel under this section if he makes application therefor, in such form and manner as the Secretary may prescribe, within sixty days after the date of publication of the applicable prewar domestic costs in the Federal Register under section 3(c) of this Act. No adjustment shall be made under this section in respect of any vessel the contract for the construction of which was made after September 2, 1945, under the provisions of title V (including section 504) or title VII of the Merchant Marine Act, 1936, as amended.

(b) Such adjustment shall be made as hereinafter provided, by treating the vessel as if it were being sold to the applicant on the date of the enactment of this Act, and not before that time. The amount of such adjustment shall be determined as follows:

(1) The Secretary shall credit the applicant with the excess of the cash payments made upon the original purchase price of the vessel over 25 per centum of the statutory sales price of the vessel as of such date of enactment. If such payment was less than 25 per centum of the statutory sales price of the vessel, the applicant shall pay the difference to the Secretary.

(2) The applicant's indebtedness under any mortgage to the United States with respect to the vessel shall be adjusted.

(3) The adjusted mortgage indebtedness shall be in an amount equal to the excess of the statutory sales price of the vessel as of the date of the enactment of this Act over the sum of the cash payment retained by the United States under paragraph (1) plus the readjusted trade-in allowance (determined under paragraph (7)) with respect to any vessel exchanged by the applicant on the original purchase. The adjusted mortgage indebtedness shall be payable in equal annual installments

thereafter during the remaining life of such mortgage with interest on the portion of the statutory sales price remaining unpaid at the rate of $3\frac{1}{2}$ per centum per annum.

(4) The Secretary shall credit the applicant with the excess, if any, of the sum of the cash payments made by the applicant upon the original purchase price of the vessel plus the readjusted trade-in allowance (determined under paragraph (7)) over the statutory sales price of the vessel as of the date of the enactment of this Act to the extent not credited under paragraph (1).

(5) The Secretary shall also credit the applicant with an amount equal to interest at the rate of $3\frac{1}{2}$ per centum per annum (for the period beginning with the date of the original delivery of the vessel to the applicant and ending with the date of the enactment of this Act) on the excess of the original purchase price of the vessel over the amount of any allowance allowed by the Secretary on the exchange of any vessel on such purchase; the amount of such credit first being reduced by any interest on the original mortgage indebtedness accrued up to such date of enactment and unpaid. Interest so accrued and unpaid shall be canceled.

(6) The applicant shall credit the Secretary with all amounts paid by the United States to him as charter hire for use of the vessel (exclusive of service, if any, required under the terms of the charter) under any charter party made prior to the date of the enactment of this Act, and any charter hire for such use accrued up to such date of enactment and unpaid shall be canceled; and the Secretary shall credit the applicant with the amount that would have been paid by the United States to the applicant as charter hire for bare-boat use of vessels exchanged by the applicant on the original purchase (for the period beginning with the date on which the vessels so exchanged were de-

livered to the Secretary and ending with the date of the enactment of this Act).

(7) The allowance made to the applicant on any vessel exchanged by him on the original purchase shall be readjusted so as to limit such allowance to the amount provided for under section 8.

(8) There shall be subtracted from the sum of the credits in favor of the Secretary under the foregoing provisions of this subsection the amount of any overpayments of Federal taxes by the applicant resulting from the application of subsection (c)(1), and there shall be subtracted from the sum of the credits in favor of the applicant under the foregoing provisions of this subsection the amount of any deficiencies in Federal taxes of the applicant resulting from the application of subsection (c)(1). If, after making such subtractions, the sum of the credits in favor of the applicant exceeds the sum of the credits in favor of the Secretary, such excess shall be paid by the Secretary to the applicant. If, after making such subtractions, the sum of the credits in favor of the Secretary exceeds the sum of the credits in favor of the applicant, such excess shall be paid by the applicant to the Secretary. Upon such payment by the Secretary or the applicant, such overpayments shall be treated as having been refunded and such deficiencies as having been paid.

For the purposes of this subsection, the purchase price of a vessel on account of which a construction-differential subsidy was paid or agreed to be paid under section 504 of the Merchant Marine Act, 1936, as amended, shall be the net cost of the vessel to the owner.

(c) An adjustment shall be made under this section only if the applicant enters into an agreement with the Secretary binding upon the citizen applicant and any affiliated interest to the effect that—

(1) depreciation and amortization allowed or allowable with respect to the vessel up to the date of the enactment of this Act for Federal tax purposes shall be treated as not having been allowable; amounts credited to the Secretary under subsection (b)(6) shall be treated for Federal tax purposes as not having been received or accrued as income; amounts credited to the applicant under subsection (b) (5) and (6) shall be treated for Federal tax purposes as having been received and accrued as income in the taxable year in which falls the date of the enactment of this Act;

(2) [As amended by the Act of August 6, 1956, c. 1013, 70 Stat. 1068, 50 U.S.C. App., Supp. V, 1742] the liability of the United States for use (exclusive of service, if any, required under the terms of the charter) of the vessel on or after the date of the enactment of this Act under any charter party shall not exceed 15 per centum per annum of the statutory sales price of the vessel as of such date of enactment; and the liability of the United States under any such charter party for loss of the vessel shall be determined on the basis of the statutory sales price as of the date of the enactment of this Act, depreciated to the date of loss at the rate of 5 per centum per annum: *Provided*, That the provisions of this subsection (c) (2) shall not apply to any such charter party executed on or after the date of enactment of this amendatory proviso; and the Secretary of Commerce is directed to modify any adjustment agreement to the extent necessary to conform to the provisions of this amendatory proviso; and

(3) in the event the United States, prior to the termination of the existing national emergency declared by the President on May 27, 1941, uses such vessel pursuant to a taking, or pursuant to a bare-boat charter made, on or after the date of the enactment of this Act, the compensation to be paid to the purchaser, his re-

ceivers, and trustees, shall in no event be greater than 15 per centum per annum of the statutory sales price as of such date.

(d) Section 506 of the Merchant Marine Act, 1936, as amended, shall not apply with respect to (1) any vessel which is eligible for an adjustment under this section, or (2) any vessel described in clause (1), (2), (3), or (4) of subsection (a) of this section, the contract for the construction of which is made after September 2, 1945, and prior to the date of enactment of this Act.

(50 U.S.C. App., 1952 ed., 1742.)

SEC. 10. No person shall be eligible to purchase or charter a war-built vessel under this Act, or to receive an adjustment under section 9, unless such person makes an agreement with the Secretary binding upon such person and any affiliated interest to the effect that the liability of the United States under any charter party or taking for use, made or effected prior to the date of the enactment of this Act, for the loss, on or after such date of enactment and prior to September 3, 1947, of any vessel owned by such person and under charter to the United States (excluding a vessel with respect to which an adjustment is made under section 9) shall be limited to an amount equal to just compensation as of the date of said loss, determined pursuant to existing law, or such amount as may be mutually agreed upon subsequent to the date of the enactment of this Act as just compensation under the provisions of existing law.

(50 U.S.C. App., 1952 ed., 1743.)

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IN THE
Supreme Court of the United States
OCTOBER TERM, 1964.

No. 245

WATERMAN STEAMSHIP CORPORATION,
Petitioner,
vs.

UNITED STATES OF AMERICA.

**ON WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE
FIFTH CIRCUIT.**

REPLY BRIEF FOR PETITIONER.

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Introduction.

In the Opinion of the Trial Court in this case, 203 F. Supp. 915 (1962), the Trial Court observed (p. 929): "It seems to me that the Internal Revenue Service is attempting to create confusion in an area where Congress has been most explicit in setting forth the statutory procedure." After studying the Brief for the United States filed in this cause, one can better appreciate this statement. Seizing on one phrase in the statute and ascribing to it a use and purpose not only contrary to explicit provisions elsewhere but quite different from the scheme of the law as a whole and dividing the single statutory formula for adjustment in price into different parts, without any basis in the statute, the Government has now compounded the confusion initially

begun in the Delaware Court and continued in the Courts of Appeals for the Third and Fifth Circuits.

Under "Question Presented" on page 2 of the Brief for the United States, the legal issue is properly established. However, by page 11 of that Brief, the issue has been subtly changed and now the Government states that "The precise question in this case is whether taxpayer was to be put in the same position *for federal income tax purposes* as if it had purchased its vessels under the Act rather than before the Act." (emphasis in original). This might be the question which the Government would like to have the Court accept as the issue, but there is nothing in the Act to lead to this conclusion. Waterman received *an* (just one) adjustment in purchase price for the 18 vessels purchased by it prior to the Act. This adjustment was computed by one indivisible statutory formula with several factors and computations but with one single result. The issue presented by the Briefs of the Parties resolves into whether Section 9 requires one adjustment, as contended by Petitioner, or three adjustments, as contended by Government (Government Brief at p. 4). The effect of this difference is whether the tax cost basis of the vessels is the actual economic investment in the vessels, as contended by Petitioner, or the artificial statutory sales price, as contended by the Government.

Avoiding the appealing, but impractical, approach of an erroneous-point-by-erroneous-point answer to the Government's Brief, Petitioner restricts its Reply Brief to the following points: Section 9 of the Act provides for a single adjustment in a purchase price of a vessel by a specific and detailed statutory formula. Section 9(c)(1) of the Act is a part of the statutory formula and implements the single adjustment under Section 9(b). The Government's proposed construction would misread and misinterpret the

purpose and effect of that Section and particularly its alternative argument as to its effect misinterprets Petitioner's construction thereof. Finally, the Government all but abandons the recourse to the legislative history of the Act, which was the primary basis of the decisions of the lower courts in its favor.

ARGUMENT.

1. Section 9(b) of the Act provides for a single adjustment in the purchase price of a vessel by a specific and detailed statutory formula.

(a) Government's proposed construction ignores clear language of Section 9(b).

The basic difference between Petitioner and the United States, and the basic fallacy in the Brief filed by the latter, is whether or not the specific language of Section 9(b) of the Act is to be followed in making *the* price adjustment and in giving to *such* adjustment its normal tax effect. The Government seizes on one phrase in Section 9(b) of the Act ("by treating the vessel as if it were being sold to the applicant on the date of enactment of this Act, and not before that time") and weaves a tenuous theory of multiple adjustments and multiple tax effects. It argues that this phrase establishes the purpose of Section 9 of the Act and, regardless of the language immediately preceding and immediately following in that section, results in the federal income tax effect sought by the Government. In so doing, the Government conveniently overlooks (1) the specific language immediately preceding and immediately following the above-quoted phrase to the effect that "*Such adjustment shall be made as hereinafter provided*", and that "*The amount of such adjustment shall be determined as follows*" (emphasis added) and, (2) that the phrase

merely sets the *time* as of which the adjustment formula thereafter provided shall be computed. Phrases such as "as of such date of enactment," "with the date of enactment of this Act," and "prior to the date of the enactment of this Act", all have the same purpose as the phrase in the initial paragraph of Section 9(b), that of fixing the time as of which the computations will be made under the formula set out in the various subparagraphs under Section 9(b). Giving to that phrase this meaning and effect removes the conflict between the meaning and effect given to that phrase by the Government and the application of the statutory price adjustment formula set out in the numbered subparagraphs of Section 9(b).

The Government's proposed construction would ignore and violate the explicit statutory language and the precise statutory formula set out in Section 9(b). This section provides only *one* adjustment, which is "an adjustment in the price of such vessel", although there are several computations to be made under the formula in determining the amount of that adjustment. Contrary to the Government's position, subparagraphs (1) through (4) of Section 9(b) do not give a price adjustment. Subparagraph (1) simply provides for a credit to the applicant or to the Government,¹ just as do subparagraphs (5) and (6). Subparagraph (1) has no meaning nor effect without subparagraph (8), which nets the credits obtained in the preceding subparagraphs and directs the application or disposition of those credits. Only after application of subparagraph (8) does an Applicant know the adjustment provided for in Section 9(b). In separating subparagraphs

¹ The statute provides, in the latter case, that there will be a payment rather than a credit, but as pointed out previously, this has not been followed by Maritime in applying the Act. See Note 22 at p. 22 in Petitioner's original Brief and computation XIV at E-5 of Appendix E, of Appendices to Petitioner's original Brief with regard to National Bulk Carriers, Inc.

(1) through (4) from subparagraphs (5), (6) and (8), the Government completely ignores the language and structure of Section 9(b), which determines only one adjustment.

Typical of the loose language and loose application of the Section 9(b) formula is Schedule I on page 7 of the Government Brief. No such Schedule appears anywhere in the record in this case and it cannot be constructed from the language of any provisions of the Act. Line 1 in that Schedule speaks of "original purchase price" and lines 1 through 3 treat subparagraph (1) of Section 9(b) as if it requires a subtraction of the statutory sales price from the original purchase price, whereas, subparagraph (1) speaks only of crediting an applicant with an excess of cash payments made over 25% of the statutory sales price of the vessel. Nowhere in the Act, nor in the Interim or Final Agreements does one find the term or the computation leading to a so-called "gross price adjustment". The Government then speaks of charter hire "returned" to Maritime (line 4) and "refund" of taxes paid by Waterman (line 8) and "net credit in favor of Maritime" (line 9), all without any basis in the language or structure of the price adjustment formula, and concludes with a so-called "net payment to Waterman" (line 10), which, in effect, is *the adjustment in the purchase price* of the vessels. The Government cannot avoid this inevitable conclusion simply by labeling it as "net payment".² To have been consistent with its labeling of line 3 as "Gross price adjustment", the Government would have labeled line 10 in Schedule I as "Net price adjustment to Waterman," as contended by the Petitioner.

² In fact no payment was made to Waterman. This net credit (or the excess of the "sum of the credits in favor of the applicant" over "the sum of the credits in favor of the Commission") was applied as a further adjustment in mortgage indebtedness from Waterman to the Government.

(b) Government's proposed construction confuses the factors in the price adjustment formula with a series of severable adjustments.

The Government's Brief constantly refers to "unwinding the actual pre-Act charter transactions and their federal income tax effects and substituting credits equivalent to different pre-Act transactions and tax effects" (see pp. 13-14). Again, however, this is another instance of the Government's confusion and its attempt to substitute for the Act adopted by the Congress, an act considered and rejected by the Congress, namely H. R. 3603 as amended in the Senate.³

H.R. 3063 as recommended by the Senate ("Senate amendment") incorporated the concept that the purchase of the vessel by the pre-Act purchaser would be recognized to have taken place at the time of the actual purchase. It would then proceed to make one computation in determining the amount of the adjustment in purchase price, considering and treating the vessel as having been purchased at that time at the statutory sales price instead of at the actual price originally paid.⁴ In the light of this adjustment provision, Section 9(e)(1) of the Senate amendment (the "Tax Section") specified that the income and excess-profit taxes of the vessel owner for the taxable year within which the delivery of the vessel was made (the original purchase) and for subsequent taxable years were to be redetermined and for such purposes the vessel "shall be considered as having been acquired at the adjusted pur-

³ See Appendix C, of Appendices of Petitioner's original Brief filed herein. See also opinion of Judge Madden in *Socony Mobil Oil Co. v. U. S.*, 287 F2d 910, 913, and dissenting opinion of Judge Cameron in *U. S. v. Waterman Steamship Corporation*, 330 F2d 128, 135.

⁴ See Section 9(e) of the Senate amendment at C-3, Appendix C, of Appendices to Petitioner's original Brief filed herein.

chase price and the income and deductions attributable to such vessel shall be determined as if this section had been in effect on the date of such delivery." Section 9(d) of the Senate amendment ("Conditions Section") provided the liability of the Government for charter hire would have been limited to 15% of the adjusted purchase price from the date of the actual delivery and the depreciation from that date would have been computed on the adjusted purchase price.

Thus, under the Senate amendment there would have been (1) a change in the original purchase price and (2) an unwinding of the charter hire and depreciation with regard to that vessel for the period between the time of the original purchase and the time of the adjustment. This unwinding of charter hire and depreciation would have in nowise been involved in the computation of the adjustment in price and its only and actual function would result in an actual refund of charter hire to the Government and an actual refund or credit to the taxpayer on the recomputation of taxes as a result of the increase or decrease in taxable income from the refund of the charter hire, less the decrease in deductions as a result of the decrease in depreciation. This would have been a true unwinding of a previous transaction.

The Act as enacted contained no such "unwinding". Rather there is an adjustment in price. (Section 9(b)), under a formula which provides for credits measured by hypothetical and actual transactions beginning with original purchase and ending with determination of the statutory sales price and including certain interim transactions, *all* of which are netted together in determining the adjustment in price. The fact that certain of these formula factors used in determining this one adjustment are *measured* by items resulting from hypothetical and actual trans-

actions, such as credits for charter hire (treated as having or not having been received), for interest (treated as having been received), and for overpayment or deficiency in taxes (treated as having been paid or refunded), does not change the effect of the netting together of these factors into a final adjustment in price. There is no unwinding of previous actual transactions and events, but rather a confirming of the original purchase at the original purchase price and a provision for making *an* adjustment in that purchase price pursuant to the formula. There is nothing in the language nor the structure of Section 9(b) to justify, or even suggest, a contrary construction or result.

The Government's division of the indivisible adjustment provided in Section 9(b) into (i) an adjustment provided by subparagraphs (1) through (4) and (7) and (ii) separate adjustments with independent tax effects for the remaining subparagraphs of Section 9(b), would be to transform a series of formula factors into "adjustments." This has the effect of revising the Act into the form of the rejected Senate amendment. Under the Senate amendment a computation such as is set out in lines 1 and 2 of Schedule I at page 7 of Government's Brief would have been proper. The adjustments and computations called for in lines 3 through 10 of the same Schedule would have followed under the provisions of Sections 9(c)(1) (except as to the amount of charter hire) and 9(e)(1) of that Senate amendment.

The Government's position that adjusted purchase price under subparagraphs (1) through (4) of Section 9(b) is equal to the statutory sales price under the Act is inconsistent with its administration of this Act under other circumstances. Section 509 of the Merchant Marine Act, 1936,⁵ provides that not more than 87½% of the purchase price of a vessel may be secured by a mortgage. In

⁵ 46 U. S. C. A. 1159.

the National Bulk Carriers, Inc. case, however, the sum of the mortgage indebtedness after adjustment in price plus the adjusted trade-in allowance (without regard to any cash payments made by applicant) exceeded the statutory sales price.⁶ If the position of the Government in this case is correct, then the Government exceeded its authority in the adjusted mortgage indebtedness allowed to National Bulk Carriers.⁷ Stated another way, if the Government's position is correct, the mortgage indebtedness of National Bulk Carriers included at least a part of its obligation to refund charter-hire to the Government. There is no statutory authority for any ship mortgage to cover any such indebtedness. On Petitioner's theory this additional indebtedness is a part of the purchase price and thus authorized by law.

2. Section 9(c)(1) of the Act is part of the statutory formula and implements the single adjustment under Section 9(b).

- (a) **The Government's proposed construction would misread and misinterpret the purpose and effect of Section 9(c)(1) of the Act.**

The Government further confuses the issue by seeking to construe subparagraph (1) of Section 9(c) of the Act ("Conditions Section") to require a separate computation from that required in Section 9(b)(8), resulting in an independent tax effect in respect of each factor in the formula under Section 9(b).

⁶ See Computation XIV, E-5, Appendix E, of Appendices to Petitioner's original Brief filed herein.

⁷ $87\frac{1}{2}\%$, maximum mortgage allowed, of \$5,153,899.31, the purchase price, is \$4,509,661.90. The mortgage indebtedness of \$4,817,213.22 after adjustment was \$307,551.32 greater than allowed by statute.

* This construction would attribute to Section 9(c)(1) tax effects beyond its limited application. This subparagraph applies only to events occurring between the original purchase and the date of the adjustment (the date of the enactment of the Act) and does not reflect transactions beyond that date. The language of Sections 9(b) and 9(c)(1), when read together, make it clear that the tax effects prescribed by Section 9(c)(1) for certain steps in the adjustment computation are only for the purpose of determining the overpayment of or the deficiencies in federal taxes of the applicant in computing the final net credit in subparagraph (8) of Section 9(b). This limited use does not, however, change the net or final result of the application of all of the subparagraphs of Section 9(b) into something other than an adjustment in price to be treated like, and to have the tax effects of, any such adjustment in price would normally be treated, or have, under the Internal Revenue Code.

The obvious, indeed the only conceivable, purpose of the explicit provisions of Section 9(c)(1)⁸ was to make clear that even though the formula factors making up the price adjustment are based upon hypothetical transactions, both Petitioner and Government must agree that for federal income tax purposes they will act subsequently to the adjustment in a manner consistent with the formula. Thus, hypothetical tax overpayments will for all time be treated as having been refunded and deficiencies, as having been paid.

The purpose of the agreement between the parties required by Section 9(c)(1) is to prevent either party, after having paid and received a price adjustment determined under a formula involving hypothetical and actual trans-

⁸ See Government Brief at p. 23.

actions, from indirectly abrogating the adjustment by use of the tax law. For example, since Petitioner was credited with interest on a hypothetical investment under Section 9(b)(5), Government could not indirectly negate a portion of this credit by later asserting an income tax deficiency against Petitioner on the theory it had constructively received such interest. Similarly, if Government received credit for charter hire previously paid by it under Section 9(b)(6), Petitioner could not later file a claim for refund of income tax on the theory that the charter hire had in fact not been received.

(b) The alternative argument of the Government of the effect of Section 9(c)(1) if Petitioner is correct is misleading and erroneous.

The alternative argument of the Government, beginning at page 25 of its Brief, is raised before this Court for the first time in this proceeding and again illustrates the complete absence of understanding of the purpose and effect of Section 9(c)(1) of the Act. The Government argues that if the conditions prescribed in subparagraph (1) of Section 9(c) do not have independent tax effects on the various computations set out in the numbered subparagraphs of Section 9(b), then it has no effect whatsoever, with the result that, contrary to Section 9(c)(1), the adjustment in price determined under Section 9(b) must be subtracted from the adjusted purchase price and not the original purchase price. As pointed out immediately above, Section 9(c)(1) has a definite, although limited, tax purpose and effect. After having attributed to Section 9(c)(1) tax effects that are not explicit or implicit in the Act, the Government now seeks to avoid entirely the explicit provisions of Section 9(c)(1).

It was stipulated and agreed that Petitioner's tax cost basis of the 18 vessels as of March 7, 1946, the day prior to the date of enactment of the Act, was \$47,149,043.42, the original purchase price of these vessels less the adjusted basis of the four vessels traded in.⁹ This stipulation follows the explicit provisions of Section 9(c)(1).

It is difficult to see how the Government can ignore the plain language of Section 9(o)(1), the agreement of the parties¹⁰ and the stipulation incorporating its requirements, and seriously urge that the case be remanded in the event Petitioner's contention is upheld. This is only another example of the extreme position taken by the Government that the Petitioner and other taxpayers have been faced with in their contention that they should be entitled to a basis for depreciation purposes, of their actual economic investment in the vessels.

3. The Government all but abandons the recourse to the legislative history of the Act which was the primary basis of the decisions of the lower courts in its favor.

In support of its argument that "The legislative history is entirely consistent with the Government's view", the Government cites only (i) a general statement or conclusion in the Conference Report on the bill as enacted, and (ii) some general statements of Representative Jackson, who sponsored the last minute changes in Section 9 on the floor of the House, in explaining these highly technical and far-reaching changes. These were explained at length in their proper perspective in Petitioner's original Brief filed

⁹ Par. 3, Pl's Exhibit F, R. 40-42.

¹⁰ Article 6, Exhibit S-3, Plaintiff's Exhibit F, R. 40, 51, 59-60.

herein (beginning at page 43 and continuing through page 69), to which the Government has made no reply in its Brief. In fact the Government makes no attempt in its Brief to support the decisions of the Delaware Court and of the Fifth Circuit, the principle basis of which was the legislative history of the Act. This is particularly ironic and significant, since these were the first decisions supporting the Government's proposed theory and was the principal reason for their holdings.

Conclusion.

In conclusion, Petitioner respectively contends (i) that the argument of the Government to the effect that the numbered subparagraphs of Section 9(b) require separate adjustments with separate tax effects instead of factors or elements which are netted for one adjustment with one tax effect, is entirely fallacious and is supported by neither the language nor the structure of the Act; (ii) that the Government's treatment of the phrase "by treating the vessel as if it were being sold to the applicant on the date of the enactment of this Act" as evidence of the statutory purpose and in support of the conclusion that, without more, the basis of a pre-Act purchaser must be the basis of a post-Act purchaser is directly contradictory of the express language and formula of Section 9(b) and cannot be reconciled with, nor supported by, the language and structure of that section; (iii) that the argument of the Government completely misreads and misinterprets the purpose and effect of Section 9(c)(1) of the Act and is contrary to the explicit provisions of the Act, the contract between the parties and their stipulation; and (iv) that the legislative history not only does not support nor is it consistent with the Government's

view but is diametrically opposite to such theory and is consistent with Petitioner's contention and theory. For these reasons and for those advanced in Petitioner's original Brief, the judgment of the Appellate Court should be reversed.

Respectfully submitted,

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Proof of Service.

I, JOHN W. McCONNELL, JR., the attorney of record for Petitioner herein and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 21st day of April, 1965, I served a copy of the foregoing Reply Brief of Petitioner by United States mail, postage prepaid, on each of the following attorneys of record for the United States of America and other interested parties at the offices indicated:

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